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Current Topics.

The Champerty Case.

WHILE THE methods of the Legal Aid Society which took up the case of a Mrs. SCHNEIDER certainly deserve censure, one of the points made by Mr. COMYNS CARR for the defendant cannot entirely be overlooked. Mr. CARR made the direct statement that "behind the plaintiff was an insurance company, and this was an attempt on the part of the accident insurance companies of London to deprive the poor of the only opportunity they had of obtaining from the people from whom these insurance companies took their premiums the compensation for the injuries which motorists inflicted on unfortunate people in the streets of London and in the country." The grounds on which the learned counsel based his statement as to the insurance companies are not disclosed, and the truth or falsity of it need not be discussed here. The suggestion, however, that but for the activities of this and other legal aid societies working on similar lines, a proportion of the persons injured would be too poor or too ignorant to have their rights redressed, cannot be passed over in silence. In the Final Report of the Committee on Legal Aid for the Poor, the methods of legal aid societies working on the lines of that associated with Mr. LAVY were adversely criticised (para. 11), but the Committee did not see their way to make concrete proposals for dealing with them, and expressed the opinion that "the most permanent and the most satisfactory remedy would obviously be the ousting of these undesirable societies by the steady spread of the legal aid societies of the genuine type." All can concur in this conclusion, but the question to be faced is whether, in present circumstances, "a legal aid society of the genuine type" would have been at hand and on the spot to do for Mrs. SCHNEIDER what the society of the other type did, namely, to advise her of her rights, take up her case, and see that she had redress. Unless this can be predicated with certainty, the legal aid society has as an "*apologia pro vitâ suâ*" the plea that, bad as it may be, it has at least seen to it that Mrs. SCHNEIDER and the others had 90 per cent. of their dues instead of nothing, and that without the usual risks and anxieties. It is, of course, clear from *Neville* v. *London Express Newspaper*, 1919, A.C. 368, that Mrs. SCHNEIDER'S success against Mr. WIGGINS did not preclude his action for maintenance—though, assuming she would have obtained the same damages and costs if a genuine legal aid society had taken up her case, it is difficult to see how he was really damnified. The result of the *Neville Case*, and the very striking differences of judicial opinion indicated in its various stages, indicate that the old law as to maintenance and champerty needs bringing up to date, in the frame of a statute.

Arbitrary Disinheritance.

SEVERAL INTERESTING points arose in the course of the Lords' debate on LORD ASTOR'S motion for the appointment of a Select Committee to inquire whether a change is necessary in the English laws governing testamentary provisions for wives, husbands and children. In the first place all the learned lords who spoke expressed their approval of the motive prompting the mover of the motion, but there was a fairly general reluctance to believe that the "hard cases" were other than very exceptional, and an equally general belief in the truth of the maxim that "hard cases make bad law." As a result of this the debate tended to become somewhat academic in character. The most instructive part of it related to the suggested means of meeting any hard cases that might arise. Lords HALDANE and BUCKMASTER were very adverse from entrusting the task of making dutiful testaments for undutiful testators upon judges; the latter actually advocating as more practical the Scots plan of allocating by law a definite fraction of the estate of a deceased person to his surviving dependants. All were in agreement as to one point, namely, the practical difficulty of meeting any hard cases without unnecessarily interfering with the rights of the dutiful testator. However that may be, it is difficult to judge whether or not these doubts are well founded. An opportunity may perhaps be afforded in the near future to come to a decision on the point when Lord ASTOR introduces a Bill, as it appears that he may, giving powers to the court, preferably the Chancery Division, to provide for dependants on the lines of the New Zealand and Victoria Statutes. Such a Bill might, it is conceived, also provide that the estate of a testator should, under an order made within a year of the death, remain liable under a maintenance order made during the lifetime.

Hyde Park *in tenebris*.

THE BROAD fact about the Hyde Park controversy is that its shady groves give opportunities for unseemly conduct at night, and will continue to do so until either a blaze of light is provided, or sufficient policemen are present to make detection probable instead of unlikely, or the public are excluded. The last course would require the railing up of the road across the park from the Victoria Gate on its eastern side, and, incidentally, would punish the vast majority who

use the park as innocent pleasure-seekers. And, whichever way is chosen, money must be spent, so there will be a temptation on the part of authority to let the agitation die down and do nothing. The park, of course, is a Royal demesne, open at the Sovereign's pleasure, and so the ordinary law against indecency can be fortified by any regulation deemed advisable. There is in fact a regulation against annoyance, operating impartially against persons of both sexes, under which a well-known knight was fined some years ago, though he was acquitted on appeal. It is hardly too much to say, however, that those who resort to a particular part of the park after nightfall, and especially those who sit on the public seats provided there, are "asking for" the attentions of strangers of dubious antecedents. In the more secluded portions there may be also unpleasant possibilities of blackmail or violence. No attempt to exclude known undesirable characters appears feasible, for, even with keepers guarding each gate, entrance could be made in taxis. The problem is therefore refractory, the one clear conclusion being that, if the ideal is to be attained and decent people can freely wander about after sunset without their eyes being offended, money must be spent, and probably spent freely. Incidentally, perhaps some of it might be recovered by the provision of enclosed spaces, screened off and open on payment, for the purpose of sun-baths on clear days. The man who was fined for exposing his body one fine morning was no doubt rightly convicted, but he may have some legitimate grievance that his offence was ranked with those of the unclean night-birds.

Bill or Cheque as Assignment of Funds.

NOTWITHSTANDING THE clear language of s. 53, sub-s. (1), of the Bills of Exchange Act, 1882, that in England "a bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof," a courageous attempt was made in the recent case of *Auchteronie & Co.* v. *Midland Bank*, 1928, W.N. 103, to get round this enactment, and to say that where the acceptors of a bill had instructed their bank, which had agreed to allow them a running overdraft, to meet the bill, the sum so provided enured for the benefit of the drawers. As might be expected, WRIGHT, J., negatived this contention without any hesitation. Curiously enough, Scots law has always differed from English law on this subject, and this difference has been preserved by s. 53, sub-s. (2) of the Act of 1882, which says, that "in Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee." In Scotland, therefore, if A, who has £100 at his bank, draws a cheque for £150 in favour of B, the cheque on presentation operates as an assignment of the £100. In the Scottish treatise on "Banking Law," by Messrs. WALLACE and M'NEILL (2nd ed., p. 12), the practice of bankers in this matter is thus stated: "Where a banker has funds belonging to a customer, but insufficient in amount to meet a cheque drawn upon the account, presentation of the cheque operates in Scotland, though not in England, as an intimated assignation on behalf of the presenter. In such cases the practice is to return the cheque with the marking 'insufficient funds,' and to place the amount standing at the credit of the customer in a separate account bearing reference to the cheque. After this has been done, intimation of the fact is sent to the drawer, and he is also notified that the cheque must be presented again, and delivered up before the balance can be paid. The bank, however, cannot refuse payment of a cheque if the presenter offer to deliver it up . . . But where a banker has agreed to honour his customer's cheques up to a certain amount, presentment of a cheque drawn by his customer before that limit is reached does not operate as an assignation, because there is no debt due to his customer which can be assigned." From this last sentence it would therefore appear that the claim of the plaintiffs in *Auchteronie's Case, supra*, would have failed on this point in Scotland as well as in England.

Doctors and Street Emergency Calls.

IN AN inquest at Shoreditch, evidence was given that a doctor, requested to leave his surgery to attend the deceased, who was found dying from consumption in a public street, refused to go unless his fee was prepaid. While modestly disclaiming authority on the moral question we may confidently lay down that he was within his legal rights—just as, no doubt, the priest and the Levite were in the parable of the Good Samaritan. For a doctor is no more bound to enter into a contract, professional or otherwise, with a stranger than any any other person, and *à fortiori*, still less is he bound to give credit. A tradesman is not bound to serve anyone who comes into his shop, and even a publican, if he is not an innkeeper, can refuse a would-be customer, see *Sealey* v. *Tandy*, 1902, 1 K.B. 296. A solicitor is not, as such, bound to accept as a client any person who presents himself, and a barrister only if, so to speak, he "asks for it," by sitting robed in a criminal court, when he may be chosen for a dock defence. Professional skill comes as the reward of years of hard work, and to require a qualified man to attend anyone gratis for the asking would be no more reasonable than to ask a butcher to give his meat away to a hungry man. Possibly a policeman might be given power to summon a doctor in an emergency and charge his fees on the rates, but a busy doctor may well have patients waiting and urgently needing his attention in his own surgery and whom he should not leave. In effect, the necessary emergency service is well provided by the great public hospitals, and a call on a doctor in private practice must very seldom be required.

Election Law.

THE EASE with which the above may be broken is shown by a recent case at Chadderton. Following a district council election, two summonses were issued against a successful candidate, a garage proprietor, for employing hackney carriages to go to and from the poll on the occasion of the election in April last. Two other defendants were summoned for lending hackney carriages for the same purpose. The councillor's explanation was that the other two defendants were friends, and used his garage, and a fortnight before the election they offered their cars to help him in his candidature for municipal honours. He accepted the offer with thanks, not thinking of the cars being hackney carriages, and not knowing that their use was illegal. On hearing of the breach of the law on polling day, he at once stopped using the cars, and the police stated that all the defendants expressed regret and pleaded ignorance. The magistrates fined the councillor £5, and the other defendants 50s. each. Under the Corrupt and Illegal Practices Prevention Act, 1883, it is an offence not only to employ, but also to let or lend any hackney carriage for the conveyance of parliamentary votes to the poll, knowing that it is intended to be used for such purpose. A similar provision is contained in the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and extended to the case of county and district councils by the Local Government Acts of 1888 and 1894 respectively. The maximum penalty for the offence on summary conviction is a fine of £100, but while the Acts prohibit the supply of hired vehicles for the convenience of voters, the owners of private cars may lend them so long as there is no payment. It seems a hard case under the Acts that proprietors of taxis are not allowed the same privilege as other citizens in this respect.

Inspectors' Queries.

MOST PRACTITIONERS are prepared to render every possible assistance to the Revenue officials in the exercise of the duties which are allocated to them under the Income Tax

Acts, but the writers of recent letters to the daily press will not be without a considerable amount of sympathy from the profession. Not long ago we referred in these columns to the forms sent to solicitors for completion of particulars of income received on behalf of clients, and we are glad to note that the issue of these forms is being made with much more discrimination than has been evident in the past. When a taxpayer purchases an additional investment or disposes of one which has been referred to in an income tax return, the officials now make it an almost invariable practice to enquire from whence the capital was derived or how sums realised from the sale of assets have been re-invested. If there is any justification for the former type of question, we submit there is no justification whatever to enquire what a taxpayer has done with moneys received on the sale of an asset. The tax which inspectors of taxes are required to administer is a tax on income, and sales and purchases of investments normally have no bearing on the matter, and we regard such questions as indefensible. In most cases the re-application of the capital will be evident from later returns of income, and taxpayers and practitioners should not be called upon to account for capital receipts immediately they arise.

The income tax necessitates many legitimate calls on the time of practitioners, but it is suggested that the enquiries to which we refer are unnecessary and without foundation in law or equity.

Mews' Digest.

THE PREPARATION of a digest of cases is necessarily an arduous, though it ought not at all times to be a dull task. When the Table of Cases digested extends to nearly 1,100 pages, and each page has on it two columns of names, one cannot but forget everything about the task of preparing the digest except its colossal magnitude. Accordingly, one's first instinct is to congratulate the editors of "Mews' Digest" on the completion of their labours by the publication of the twenty-fourth, and last, volume of their work. Upon the question of the general usefulness of a good digest to the practitioner there can be but one opinion: If the arrangement of the cases is satisfactory and the principles have been tersely and accurately extracted from the cases, an enormous amount of labour and a good deal of capital may be saved by its use. Further, if the practitioner is not within easy reach of a library well equipped with reports of cases, access may be obtained through the digest to a next best substitute for the cases themselves. "Mews'" is well above the standard of a good digest, and deserves a place on the shelves of every practitioner's library.

Gaming without Chances.

A CASE of considerable interest was heard recently at the Thames Police Court, upon a summons under s. 44 of the Metropolitan Police Act, 1839, against the keeper of a refreshment house for suffering unlawful gaming there. The shopkeeper had an automatic machine worked by a spring apparently so strong that the operator could not control it. A penny dropped in released a ball, which when the spring was put into action, flew round in a groove, and, after striking against several pins, fell into one of a number of holes. If it fell into a particular hole or holes the player got his penny back, but no other reward. The defendant operated his own machine in court, and with eight tries lost eight pennies. The summons was dismissed, the magistrate holding that playing with the machine was not gaming. The case of *Lockwood* v. *Cooper*, 1903, 2 K.B. 428 was cited, which decided that to constitute gaming the game played must be one which involves wagering, each player must have a chance of losing as well as of winning. In the case before the magistrate the machine could never lose. The Scottish case of *McIntyre* v. *Tumelty*, 1918, S.C. (J.) 68, was also considered. The machine there was similar, save that it was operated by a halfpenny, which was never returned, successful play merely entitling the player to another turn. It was held that this did not infringe the Gaming Machines (Scotland) Act, 1917, which makes it unlawful to permit in any shop the use of a machine for the purpose of any game in which a prize or stake in money or kind is awarded or forfeited contingently on the result of the operation of the machine. Lord SALVESEN aptly put it that there was no stake given or forfeited; a mere prolongation of amusement for the same halfpenny was not a prize.

Traffic Offences: An American Proposal.

NOT ONLY in England has the enormous increase in road traffic raised problems for the police and the police courts. The United States has them even more acutely, and Massachusetts is considering a plan whereby trivial traffic offences can be dealt with without overwhelming tribunals which have more important work to do. Where the offence consists of some defect in the car itself, notice is to be given requiring it to be remedied, and the offender has later to produce the car for inspection as proof that the notice has been obeyed. If he fail, the registration of his car is suspended till he obeys. In other petty cases, the first step is an official warning, disregard of which involves suspension of driving licence. There seems to be no appeal against such suspension, a matter which could be remedied, if the plan were adopted here, by giving an appeal to a court of summary jurisdiction. For breaches of local traffic regulations fixed penalties are to be the order of the day, and the offender can save himself and the authorities further trouble by confession and payment. The only trouble about this is that wealthy offenders may prefer to break the law and pay as a regular practice, and some further step should be taken such as, after a certain number of offences, a summons to show cause why registration and driving licence should not be suspended. The plan, with such modifications and other suitable ones, might meet our difficulties here, and save both the time of the court and the time wasted by the police in attending to give evidence.

Consistory Courts and the Laity.

THE JURISDICTION of ecclesiastical courts over lay persons is shown by two recent decisions of Judge CHALONER DOWDALL, K.C., sitting as Chancellor of the Diocese of Liverpool. An exclusive right to the use of a particular part of a churchyard for the purposes of burial cannot be obtained without a faculty, and an application was therefore made on behalf of the EARL OF DERBY for sanction to fence off 399 square yards of the churchyard of St. Mary's, Knowsley, as a family burial ground. In decreeing the faculty, the Chancellor said that the applicant had provided more than an acre as an addition to the churchyard. On an application by an incumbent with regard to burial fees, the Chancellor remarked that no one could insist on a tombstone. The old method was for people to be buried without coffins, and he believed that at common law the right went no further. There was no right to what may be called luxuries, and a parishioner (or his executors on his behalf) could not claim to be buried in a metal coffin or to have a tombstone—except by leave, which is usually given. In *Maidman* v. *Malpas*, 1794, 1 Hag. Con. 250, it was stated by Lord STOWELL (then Sir W. SCOTT), at p. 208: "All parishioners have a right to be buried in the churchyard without leave of the incumbent; but the permission of the ordinary is necessary before any monument can properly be erected . . . The consent of the incumbent is taken on such occasions, and especially of the rector, for monuments in the chancel. A faculty is likewise required, though it is frequently omitted under the confidence reposed in the minister, and the ecclesiastical court is not eager to interpose." Disputes are most likely to arise over inscriptions, as in *Egerton* v. *All of Odd Rode*, 1894, P. 15, where it was proposed to include an appeal for prayers for the dead.

The Summary Jurisdiction Acts and Rules in the Divorce Court.

THERE is no greater danger of usurpation than that which proceeds little by little, under cover of rules of procedure, and at the instance of judges themselves, said Lord SHAW in *Scott* v. *Scott*, 1913, A.C. 417; 57 SOL. J. 498, in which the House of Lords overruled several cases and declared illegal a practice of hearing some cases in camera that had been inaugurated step by step by cases commencing in 1869.

The duty of hearing in petty sessions certain matrimonial causes was cast upon justices by the Married Women (Maintenance) Acts, 1895 to 1925. In some cases their jurisdiction is concurrent with the Divorce Court, for instance, proceedings for maintenance founded on desertion may be instituted either in the divorce court or in a petty sessional court. In other cases the jurisdiction of the latter court is exclusive, for instance, proceedings founded on neglect to maintain. An application founded on wilful neglect to maintain is different from an application for alimony. In applications for alimony, the fact that the husband has provided reasonable maintenance is immaterial, whereas in neglect to maintain the wilful neglect to provide reasonable maintenance in the past is a *sine quâ non*.

Section 8 of the Summary Jurisdiction (Married Women) Act, 1895, provides that all applications under that Act shall be made in accordance with the Summary Jurisdiction Acts. The Summary Jurisdiction Act, 1848, enacted that the thirty-seven forms in the schedule, or forms to the like effect, shall be deemed good, valid and sufficient in law. The Summary Jurisdiction Act, 1879, s. 29, conferred on the Lord Chancellor a comprehensive power to make rules as to the forms to be used under the Summary Jurisdiction Acts, and adapting to the provisions of that Act the Summary Jurisdiction Act, 1848. This power to make rules was extended by s. 129 of the Children Act, 1908, and by s. 40 of the Criminal Justice Administration Act, 1914. The most important rules now in force are the Summary Jurisdiction Rules, 1915 and 1926, and the Schedule of Forms in the Summary Jurisdiction Act, 1848, has been repealed by the Statute Law Revision Act, 1891.

The Summary Jurisdiction Act, 1848, s. 1, provided that no objection shall be taken or allowed to any complaint or summons for any alleged defect therein in substance or in form. In *R.* v. *Grant*, 1857, 21 J.P. 70, it had been held sufficient to describe an offence in the words of the legislature, and this received legislative confirmation by s. 39 (1) of the Summary Jurisdiction Act, 1879, which enacted that the description of any offence in the words of the Act creating the offence, or in similar words, shall be sufficient in law, and though this subsection has been repealed, the effect of it has been saved by sub-s. (4) of s. 32 of the Criminal Justice Act, 1925, which enacts that any complaint or summons which is in such form as would have been sufficient in law if this Act had not passed, shall notwithstanding anything in that section, continue to be sufficient in law.

With some surprise, one finds the Divorce Court Judges giving directions as to the form of summons to defendants to be used by justices. In *Broadbent* v. *Broadbent*, 43 T.L.R. 186, the judge said that in a summons under s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, to a wife to show cause why her maintenance order should not be discharged on the ground that she has committed an act of adultery, should be given particulars of the time, the place of adultery, and the name of the alleged adulterer. Twelve months later in *Boston* v. *Boston*, 92 J.P. 44, the President stated: "It should be said now, that in the state of the law in which the justices have to deal in proceedings under the Summary Jurisdiction (Married Women) Acts, if there is a charge of adultery, the act of adultery should be specified with particulars." However desirable this rule of practice may be, the power of a divorce court judge to give such directions seems extremely questionable, as s. 1 of the Summary Jurisdiction Act, 1848, provided distinctly that no objection shall be taken or allowed to any summons for any alleged defect therein in substance or in form. A conviction stands in a different category, and as to that *Smith* v. *Moody*, 1903, 1 K.B. 56; 51 W.R. 252; *R.* v. *Hankey*, 1905, 2 K.B. 687; 54 W.R. 80; and *R.* v. *Chancellor*, 69 J.P. 383, should be referred to.

In cases commencing in 1896 and extending down to 1908, the Divorce Court judges on hearing appeals have given directions as to what should be done on the original hearing before justices. They have given directions that justices' clerks are to take notes of evidence—in longhand unless the parties agree to a shorthand note—and of all the reasons for the justices' decision. Further that he shall certify a copy of such notes as correct, and that if the note is taken in shorthand he shall not charge the party requiring the note with any extra fee on that account. In *Barker* v. *Barker*, 74 L.J.P. 74; 21 T.L.R. 253, counsel even suggested that a justices' clerk who had not carried out the judges' wishes was guilty of contempt of the Appellate Court. However desirable these requirements may be, one is somewhat surprised at the absence of a Summary Jurisdiction Rule prescribing the procedure on the hearing before the justices, and at the absence of a High Court Rule under the Administration of Justice Act, 1925, s. 15 (1) (5), which enables rules to be made regulating and prescribing the procedure on appeals from any court to the High Court.

Section 10 of the Summary Jurisdiction Act, 1848, provides that every complaint shall be for one matter of complaint only, and not for two or more matters of complaint. In the recent case of *Tyrell* v. *Tyrell*, 92 J.P. 45, a summons alleged that the husband had been guilty of (1) persistent cruelty to his wife, and also (2) of wilful neglect to provide reasonable maintenance for her. The justices had called upon the wife's solicitor to make his election on the ground of complaint upon which he should proceed. Upon appeal, the divorce divisional court remitted the case to the justices for the other ground of complaint to be heard. Although it may be arguable whether the "matter of complaint" is the order of maintenance applied for, or the persistent cruelty or neglect to maintain complied of, it is surprising to find that on the hearing of the appeal, no reference was made to s. 10 of the Summary Jurisdiction Act, 1848, which was the one and only material section.

It was decided some sixty years ago, that a separation by agreement was not desertion, because the cohabitation was brought to an end without the consent of the wife. Since then the effect of a wife covenanting or agreeing for valuable consideration not to sue, has been considered from time to time. It seems clear that the deed or agreement must be pleaded as a defence, or it can be ignored. In the High Court, the position is made clear by s. 41 of the Supreme Court of Judictaure (Consolidation) Act, 1925, which provides that every matter of equity on which an injunction against the proceeding might formerly have been obtained, may be relied on by way of defence thereto, but the proceeding in the High Court or the Court of Appeal shall not be restrained by injunction. By s. 202 these provisions are extended to every inferior court which has jurisdiction in equity, or at law and in equity, and by s. 201 an order in Council may confer on inferior courts of civil jurisdiction, the same jurisdiction in equity as any county court has. These provisions do not extend to petty sessional courts. Where the wife has covenanted not to take the proceedings in question before the justices, the point would appear to be open to argument whether the husband's only remedy is to apply for an injunction. In a recent case of *Diggins* v. *Diggins*, 1927, P. 88; 136 L.T. 224, on an appeal from an order of maintenance made on the ground that the husband had wilfully neglected to provide reasonable maintenance for his wife, the President

said: "If any case arises where a wife who has entered into a deed proceeds, in disregard of it, to seek something different from the deed from the justices, she will meet with an answer which will prevent the possibility of further question. If she does not meet with it in the first instance, she may meet with it here." Order LIX, r. 7, empowers the Divorce Divisional Court "to give any judgment and make any order which ought to have been made." *Brown* v. *Brown* (*No.* 1), 79 L.T. 102 and *Dunning* v. *Dunning*, 55 J.P. 650 are instances of the court, on appeal, exercising the powers of the court appealed from. The question has never been argued whether in the petty sessional courts a covenant not to sue can only be given effect to by an injunction, and if that is so, whether or not the Divisional Court, on appeal, can utilise the powers conferred by s. 41 of the Judicature Act, 1925. It would be very unsatisfactory for the law to be one thing in the Petty Sessional Court, and something else in the Divorce Divisional Court on appeal.

Charter-parties and Port Customs.

A RECENT example of a conflict between the above occurred in *Smith, Hogg & Co. Limited* v. *Louis Bamberger & Sons*, 72 SOL. J. 138. The plaintiffs' ship had discharged deal battens at Surrey Commercial Docks, where the two-fold custom is for the ship's stevedores to discharge timber with the ship's tackle (1) on to the quay, (2) into barges. As to (1) the first pieces are used to make a stage between the quay and the ship's side, and so much of the cargo as may be discharged on to the quay is removed and sorted by the Port of London Authority. The shipowner pays the stevedores for discharging and stacking, but the consignee pays the Authority for removing and sorting. As to (2), the consignee sends craft alongside, but the shipowner provides the men to receive and stow the goods. The plaintiffs contended that under the bill of lading their liability as shipowners ceased when the battens were ready for release from the ship's tackle. The relevant cause of the charter-party, incorporated by reference, provided that "the cargo is to be brought to and taken from alongside the steamer at charterer's risk and expense as customary." The defendants had repudiated liability, and the plaintiffs, having paid the charges under protest, claimed the amount as damages for breach of contract, or as money paid at the implied request of the defendants. Mr. Justice WRIGHT held that (1) the cargo was alongside the quay when ready for release from the slings, or (if discharged by hand) when laid on the quay; (2) that so much of the cargo as was discharged into barges was not alongside until the barges were loaded and trimmed by the shipowner. Judgment was therefore given for the plaintiffs for the cost of stacking on the quay. It was further held that as there was nothing in the contract inconsistent with the custom as to stowage in barges, the defendants were not liable for that part of the claim, and they obtained judgment accordingly.

The House of Lords held that the port custom was overridden by the charter-party in *Rederi Aktiebolaget Aeolus* v. *W. N. Hillas & Co. Ltd.*, 70 SOL. J. 109. The plaintiffs' ship had discharged timber at the Victoria Dock, Hull, on the terms of the Scanfin charter-party, viz., that the cargo should be taken from alongside at charterer's risk and expense. The plaintiffs contended that when they handed the goods over the ship's rail—or as far over as the ship's tackle would reach—the goods were then alongside, and it was for the charterers to incur the expense of carrying them to the timber yard. The defendants contended that the shipowner had to discharge the ship according to the custom of the port of Hull, viz., by erecting a stage between the ship and the dock and carrying the timber across to the bogie rails on the quay. Mr. Justice GREER—as he then was—held that the word "alongside" had not acquired a special trade meaning at the port of Hull, and that the defendants were liable for the proportion of the stevedores' charges attributable to taking the timber away from the ship's rail. The Court of Appeal upheld this judgment. Lord Justice BANKES stated that, having regard to the language of the charter-party, the custom was inadmissible in order to place upon the shipowner the expense of conveying the timber from the ship's rail to the bogie rails, which were 18 feet from the edge of the quay. Lord Justice SCRUTTON and Lord Justice ATKIN—as he then was—concurred. In the House of Lords Viscount Cave, L.C., stated that the same charter-party had been the subject of the decision of the House in *Palgrave Brown & Sons, Ltd.* v. *Owners of s.s.* "*Turid*," 66 SOL. J. 349, relating to the port of Yarmouth, and there was no reason to distinguish the two cases.

The custom of the Port of London, as to stowage in barges, had been defined in *Glasgow Navigation Company Limited* v. *W. W. Howard Brothers & Co.*, 26 T.L.R. 247. The charter-party was in the terms set out above, and the plaintiffs claimed to recover the cost of stowing craft with pitch-pine lumber consigned to the defendants. The plaintiffs contended that although there was a custom, it went no further than to require the ship's stevedores to place and stow the lumber in barges, as distinguished from trimming it. The defendants contended that the custom went so far as to require the load to be so trimmed that the lightermen might have room to row if necessary. Lord SUMNER—then Mr. Justice HAMILTON—stated that the custom was neither unreasonable nor uncertain, and he held that the defendants had proved its existence to the extent they claimed—provided that the craft in the case of overside delivery were open craft. Judgment was therefore given for the defendants.

Bankers' Cash Payments.

THE question of liability for the above, if made to the wrong person, was considered in *Auchteronie and Co.* v. *Midland Bank Limited*, 72 Sol. J., p. 337). The action was adjourned from Liverpool Assizes to London, and the facts were as follows: The plaintiffs had sold goods to Nigerian Products Limited, and had drawn upon the latter a three months' bill, which was accepted payable at the defendant bank and returned to the plaintiffs. On the due date the acceptors notified the defendant bank, and arranged for payment to be charged to their account, as the bill was within the limits of their overdraft. At the expiration of the days of grace a cashier of the plaintiffs took the bill to one of the partners, who endorsed it for the cashier to pay into the plaintiffs' bank, for collection through the Liverpool clearing house. Instead of so doing, the cashier presented the bill, already endorsed in blank, and received £876 9s. across the counter of the defendant bank. In due course the cashier was sentenced to penal servitude for fraud, and the plaintiffs sued the defendant bank for (1) negligence, (2) money had and received, (3) conversion. The defendant bank contended that there was no negligence, as the bill was presented by the servant of the plaintiffs, who were estopped from denying his authority to receive the money. The evidence of custom was that trade bills, especially for large amounts, were presented to the bank at which they were accepted payable, for collection through the clearing house. The defendants contended (*a*) that while presentation of a trade bill across the counter was unusual, it was not irregular, and (*b*) that it was their duty to pay without enquiry, unless the appearance of the person presenting the bill was suspicious. Mr. Justice WRIGHT held (1) that the duty to take care only arose where there was privity of contract, and in this case the defendant bank owed a duty to the acceptors, but not to the plaintiffs, and there was therefore no negligence; (2) the Bills of Exchange Act, 1882, s. 53, provides that the

drawing of a bill in England is not an assignment of the drawees' funds to the payee, so that even if the acceptors had not been overdrawn it could not have been said that the defendant bank "had and received" the money for the use of the plaintiffs; (3) the bill, on being properly endorsed in blank by the payees, became payable to bearer under the above Act, ss. 8 (3) and 34 (1), and the defendant bank, having dealt with a negotiable instrument in good faith and for value, were protected by the above Act, s. 59. Judgment was therefore given for the defendant bank.

Somewhat similar facts had been considered in *Commissioners of Taxation* v. *English, Scottish and Australian Bank*, 1920, A.C. 683. In that case a taxpayer had sent £743 to the plaintiffs by bearer cheque, which was stolen and paid into a new customer's account with the defendants. The latter were alleged to have been negligent in collecting a cheque for £743 for a new customer of whom they knew nothing, who drew against the cheque and disappeared. The Privy Council (affirming the Supreme Court of New South Wales) held that £743 was not a sum of such magnitude as to create the duty of enquiry, and that judgment was rightly given for the defendant bank.

The recent decision was based on the leading case of *Bank of England* v. *Vagliano Brothers*, 1891, A.C. 107, in which the House of Lords held that unusual payments across the counter, of bills for large sums, were neither irregular nor sufficient to excite suspicion. Mr. Justice WRIGHT remarked that the practice of presenting bills through the clearing house might have become more general since 1890, but the defendant bank could not have refused to pay, nor even deferred making the payment, without a risk of injuring their customers' credit and so committing a breach of duty. The court, by treating as irregular that which was merely infrequent or unusual, would be making an inroad on the established rules of the law merchant on insufficient grounds.

A Conveyancer's Diary.

Obligation of a Vendor to Make a Good Title: *Re Spencer and Hauser*, 72 SOL. J. 336.

In *Re Spencer & Hauser*, 72 SOL. J. 336; 1928, W.N. 135, Mr. Justice Tomlin applied the principle enunciated by Swinfen Eady, J., in *Re Baker and Selmon*, 1907, 1 Ch. 238, and approved by the majority of the Court of Appeal in *Re Atkinson & Horsell*, 1912, 2 Ch. 1.

The facts in *Re Baker & Selmon* were briefly as follows: A contract for the sale of freehold properties provided that: (1) the vendor "who is the trustee under the will of . . . J.B. is selling the said properties under the trusts and powers vested in him thereunder and shall not be required to enter into any covenant other than that implied by his conveying in such capacity as aforesaid"; and (2) "the tenant for life . . . will join in the conveyance to the purchaser for the purpose of releasing her life interest therein."

It appeared that the vendor had no power of sale or trust for sale under the will, though the entire legal estate was vested in him by it. But he had entered into the contract at the written request of the tenant for life and all the other beneficiaries, so that he could compel them to join. The purchaser objected to the title offered on the ground that the vendor had no power of or trust for sale, and when the vendor produced the written request to sell and offered to join all the beneficiaries the purchaser pointed out that this was not the title offered by the contract and claimed the return of his deposit.

On a vendor and purchaser summons issued by the vendor, Swinfen Eady, J., held that the vendor had shown a good title in accordance with the contract. The learned judge distinguished the case from *Re Bryant & Barningham*, 44 Ch. D. 218, where the vendors, finding that they had no present trust for sale, offered to procure a conveyance from the life tenant, a person who was not bound to convey at their request; and also from *Re Head's Trustees & Macdonald*, 45 Ch. D. 310, where the offer to procure the concurrence of the beneficiaries was not made till after the time for completion had expired and after the contract had been repudiated by the purchaser.

In *Re Atkinson & Horsell* there was a contract for the sale of land providing that title should commence with a general devise contained in the will of a testator who died in 1842. The vendor in fact derived title from a disseisor, who, in 1874, was allowed by the true owner to take possession of the land and title deeds. He claimed to have shown a good title up to 1874 and a good possessory title since that date. The Court of Appeal, by a majority, affirmed the decision of Swinfen Eady, J., that the vendor had shown a good title which could be forced upon the purchaser.

This decision was given in face of a strong dissenting judgment by Fletcher-Moulton, L.J. "If there be a condition as to title," said the learned Lord Justice, "however severe it be on one side, however lax it be on the other, if it be one of the conditions of the contract the vendor must comply with it and the purchaser cannot complain that he does no more. In considering whether or not the vendor is ready to perform his contract we must therefore take the measure of his obligation as fixed by the conditions. It may be that he can give a perfectly good title to the purchaser, but if he has undertaken to give a title of a particular type, and the good title which he offers is not of that type, the purchaser cannot be compelled to accept it, because it is not that which contractually the vendor has undertaken to give. An experienced conveyancer may say it is in reality as valuable and as sound a title, but the purchaser has a right to say: 'I do not take anybody's advice; I contracted for one type of title and no court can make me take one which does not comply with the description in the contract.'"

That logical argument, fortunately, did not prevail. On the contrary, the view was acted upon that there was a general obligation to show a good title and that the vendor had satisfied that obligation.

In *Re Spencer & Hauser*, the sale was by auction, subject to a special condition that the vendors were selling as trustees for sale under the will of a testator who died in 1923. After investigating the title the purchasers objected to it, on the ground that there was no trust for sale in the will referred to, and, that being so, the vendors had no right to sell or convey the property. The vendors then stated that the words "trustees for sale" inserted in the special conditions should have read "personal representatives." They offered to convey as such personal representatives, claiming that by so doing they would make a good and sufficient title according to the contract.

On a vendor and purchaser summons, Mr. Justice Tomlin held that the vendors could compel the purchasers to accept a title made by them as personal representatives. "It would be a strange construction," observed the learned judge, "to place upon any contract for sale of land, unless absolutely compelled by the language, a warranty by a vendor that he was making a title in a particular form." The contract in *Re Spencer & Hauser*, like that in *Re Baker & Selmon*, was a contract to make a good title with an indication of the way in which, in the first instance, the vendors proposed to do it.

Thus, in the absence of an express condition in a contract for the sale of land providing that title shall be made in a certain way and in no other way, the vendor's obligation under such a contract is a general obligation in any capacity to make a good title.

The Home Secretary has appointed Mr. Justice TOMLIN to be Chairman of the Advisory Committee on the Administration of the Cruelty to Animals Act, in the place of the late Lord Cave.

Landlord and Tenant Notebook.

Distress by Landlord in Liquidation of a Company.

The extent of a landlord's right to distrain where the lessee is a company and has gone into voluntary liquidation, was the subject of an important judgment delivered by Romer, J., in *In re South Rhondda Colliery Co.* (1898), *Ltd.*, 1928, W.N. 126, the material facts of that case being briefly as follows:—A mining lease to a company contained a clause giving the lessor the right to distrain in the same way as a landlord might for rent in arrear, on the company's plant and chattels, if and whenever any of the rents and royalties reserved under the lease should be in arrear for thirty days.

In February, 1928, an extraordinary resolution was passed for winding up the company voluntarily, and at that time there was outstanding a series of debentures issued by the company, and secured, *inter alia*, by a floating charge on all the company's assets, but the debenture-holders did not think it desirable in the circumstances to apply for the appointment of a receiver. Subsequently to the resolution for winding up, the lessor proceeded to exercise the right of distress given him under the lease, by distraining upon the colliery plant of the company, for rent that was in arrear. Thereupon the liquidator applied to the court for an injunction to restrain the lessor from further proceeding with the distress or from levying any further distress on the goods of the company on the ground (*inter alia*) that the preferential debts of the company which included claims under the Workmen's Compensation Acts, would more than exhaust any possible proceeds of the sale of the company's assets, and in this contention it is important to note that the preferential debts falling within s. 209 (1) of the Companies Act, 1908, will have priority over the claims of holders of debentures under any floating charge (s. 209 (2) of the Companies Act, 1908).

The position of a landlord on the winding up of a company which is a lessee will be found well stated in the judgment of Lindley, L.J., in *In re Oaks Pit Colliery Ltd.*, 1882, 21 Ch.D., at p. 329. The learned Lord Justice said, in that case:—"The object of the winding up provisions of the Companies Act is to put all unsecured creditors upon an equal footing and to pay them *pari passu*. A landlord who has not put in a distress before the commencement of the winding up is an unsecured creditor . . . In all cases . . . in which a landlord seeks to distrain after a winding up order or seeks to be paid his rent in priority to other creditors he must show why he should have such an advantage over the other creditors. There are numerous decisions in the books relating to this subject . . . (which) may be grouped into two classes. . . .

"First, as to rent in arrears at the commencement of the winding up. (1) If the landlord is a legal creditor of the company in respect of rent in arrear at the commencement of its winding up, he is not allowed to distrain for the arrears of rent, but must prove his debt like any other creditor . . . (2) Moreover in cases of this kind the circumstances that the liquidator has retained possession and carried on the company's works has been held not to entitle a landlord . . . to distrain for rent in arrear in the winding up . . . .

"Secondly, as to rent accruing after the commencement of the winding up. (1) If the liquidator has retained possession for the purpose of the winding up, or if he has used the property for carrying on the company's business, or has kept the property in order to sell it, or to do the best he can with it, the landlord will be allowed to distrain for rent which has become due since the winding up . . . (2) But if he has kept possession by arrangement with the landlord and for his benefit as well as for the benefit of the company, and there is no agreement with the liquidator that he shall pay rent the landlord is not allowed to distrain."

But there is another important principle to be considered in determining whether a landlord has a right to distrain in a winding up. The authorities seem to show that where the company has virtually ceased to have any interest in the property on which the landlord proposes to distrain, the landlord will not be restrained from exercising his right of distress at the instance of the liquidator. Thus in *In re New City Constitutional Co., Ltd.: ex p. Purcell*, 1886, 34 Ch.D. 646, the court held that the liquidator has no right to intervene against the landlord's distraining where the assets of the company were insufficient to meet the debenture debt. This principle was followed in *In re Harpur's Cycle Fitting Co.*, 1900, 2 Ch.D. 731, that decision going somewhat further than *ex p. Purcell*, by reason of the fact that the court was of opinion that in such circumstances it made no difference that a receiver had not been appointed on behalf of the debenture-holders. The *ratio decidendi* of these cases appears to be that where the assets are insufficient for the debenture-holders, the company is to be regarded as having no interest in the assets, so that the liquidator cannot intervene. Romer, J., however refused to apply this principle in *In re South Rhondda Colliery Co.* (1898) *Ltd.*, on the ground apparently that there were a large amount of preferential debts outstanding which took precedence over the claims of the debenture-holders.

Our County Court Letter.

ACCIDENTS DURING INTERVALS OF REST.

THE employer is liable for the above, under the Workmen's Compensation Acts, 1925 and 1926, in circumstances such as those in the recent case of *Macnamara* v. *Stamford Commercial Mill Company, Limited*, at Ashton-under-Lyne County Court. The applicant was aged fifty-three and had been employed as a weaver by the respondents for thirty-two years. While working three looms, she had taken a rest by sitting on a leather strap suspended from one of the looms, and had sustained a fracture of the right leg by reason of the strap breaking, thus causing her to fall to the floor. The applicant's case was that the overlookers provided the straps, which were used with the full knowledge of the management, and she therefore claimed £26 5s. 5d. for twenty-six weeks' incapacity. His Honour Judge BURGIS stated that a question arose as to the propriety of the long-established custom of weavers suspending from their looms leather straps upon which to sit while the looms did not require attention. He was satisfied that the straps were used with the full knowledge of the management, and the sitting on the straps was incidental to the performance of the applicant's duties, just as much as standing in front of, or leaning against, the loom. An award was therefore made for the full amount of compensation claimed by the applicant.

An accident during an interval for meals, during which no wages were paid, had been followed by an award in *Gorman* v. *Barclay Curle and Co. Ltd.*, 1927, 19 B.W.C.C. 564. The applicant was the mother of a boy aged fourteen, who had been killed while employed in a ship in course of construction. The deceased was a tank-boy or sweeper-up, and his duties were to sweep in the bottom or tank of the ship. He usually had his meals ashore in the yard, but on the day of his death he and a companion had climbed to the main deck of the ship and had their dinner, as they were permitted to do. Towards the end of the dinner hour the deceased began to descend a ladder from the main deck, which was not the only way to the shore, but was part of a permitted route. His object was to "clock-in" at the yard for the afternoon shift, and to put his dinner-can in the riveter's tool box, where he usually kept it. In descending the latter he missed his footing and was killed by the fall. The Sheriff-Substitute at Glasgow held that the deceased was killed while doing an act for his own purposes, and refused compensation. The Court of Session

reversed this decision. Lord ANDERSON stated that the question was whether a claim for compensation was vitiated merely because the deceased chose a route to the "clocking" gate which also served a personal purpose—the storage of his dinner-can. This intention of the deceased to serve a personal purpose, while doing something essential to his employment, viz., the clocking-in, did not debar the dependent applicant from compensation. The Lord Justice-Clerk stated that the deceased, by being on the main deck, had not encountered any "added peril," and that when injured he was doing something incidental to the service of his employers.

The principle that an unauthorised act, if connived or "winked" at by responsible officials, is within the sphere of employment, had been established by cases such as *Mellor* v. *Ashton Brothers and Co. Limited*, 1922, 14 B.W.C.C. 128. The applicant was working bare-footed at a mule in a spinning mill, and in order to oil parts of the machine he climbed over the headstock, or wooden platform over the travelling parts, instead of walking the 17 yards round the base. In so doing he caught his left foot in the revolving cogs, and two toes had to be amputated. For the previous six years notices had been posted prohibiting climbing over the headstock, but the County Court judge at Hyde found that the prohibition was not enforced, and employees were not reprimanded. Compensation was therefore awarded and the decision was upheld by the Court of Appeal. Lord STERNDALE, M.R., said that the notice had been ignored to the knowledge of the overlookers, if not of the manager, and was not a genuine but a nominal prohibition. Lord Justice ATKIN—as he then was—stated that an effective prohibition would take the peril, incurred by disregarding it, out of the scope of the employment, but there was evidence upon which the County Court judge could find that the notice had been waived. Lord WRENBURY—then Lord Justice YOUNGER—concurred.

Practice Notes.

PROOF OF DEBT BY MONEYLENDER.

AN important point of practice under the Moneylenders Act, 1927, has been lately decided by the Court of Appeal in *In re a Debtor*, 1928, W.N. 133.

Under sub-s. (2) of s. 9 of the Moneylenders Act, 1927, no proof of a debt due to a moneylender in respect of a loan will be admitted in the bankruptcy of the debtor unless the affidavit verifying the debt is accompanied by a statement showing in detail, *inter alia*, "(*a*) the amount of the sums actually lent to the debtor and the dates on which they were lent and the amount of every payment already received by the moneylender in respect of the loan and the date on which every such payment was made; and (*b*) the amount of the balance which remains unpaid, distinguishing the amount of the principal from the amount of interest included therein, the appropriation between principal and interest being made in accordance with the provisions of the Moneylenders Act, 1927, where the interest is not expressed by the contract for the loan in terms of a rate."

The point in issue in *In re a Debtor*, *supra*, was whether these provisions were retrospective so as to apply to transactions which had been entered into before the 1st January, 1928, the date of the commencement of the Act, and it was urged on behalf of the creditors, who had refused to give a statement showing the above-mentioned particulars, that the sub-section could not be retrospective, having regard to the fact that sub-s. (1) of the same section was not retrospective, that sub-section referring, in terms, to a loan made by a moneylender "after the commencement" of the Act. (That sub-section provides, *inter alia*, that the interest on loans made by moneylenders is to be calculated at a rate not exceeding 5 per cent. for the purposes of the provisions of the Bankruptcy Act relating to the presentation of a petition, voting at meetings, compositions and schemes, and dividends.)

The Court of Appeal, however, took the view that the sub-section was retrospective, and that accordingly the statement required by that sub-section had to accompany the affidavit verifying the debt.

The principle on which the Court of Appeal arrived at the above conclusion appears to have been that a statute, in so far as it deals with procedure, is to be presumed to be retrospective. Authority for this proposition is to be found in the judgment of Lord Blackburn in *Gardner* v. *Lucas*, 1878, 2 A.C., at p. 603, where the learned judge said: "*Primâ facie* any new law that is made affects future transactions. Nevertheless, it is quite clear that the subject-matter of an Act might be such that though there were not any express words to show it, it might be retrospective. For instance, it is perfectly settled that if the legislature intended to frame a new procedure that instead of proceeding in this form or that you should proceed in another and a different way, clearly, then, bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the new form of procedure are always retrospective unless there is some good reason or other why they should not be. Then, again, I think that where alterations are made in matters of evidence, certainly upon the reason of the thing, and I think upon the authorities also, they are retrospective, whether civil or criminal."

Whether, therefore, the transaction has been entered into before or after the 1st January, 1928, the necessary statement required by sub-s. (2) of s. 9 of the Moneylenders Act, 1927, must accompany the affidavit verifying the debt where a moneylender intends to prove in the bankruptcy of the borrower.

Correspondence.

Sections 93 and 100 of the Companies Act, 1908.

Sir,—I have always assumed, though perhaps erroneously, that s. 100 only referred to mortgages *created* by the company. There is no doubt that s. 93 (1) is perfectly plain as it uses the words "by a company." Section 100 (1) says that "a limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the Company." These words would seem to imply that if a company buys an equity of redemption it ought to enter in its register of mortgages kept under s. 100 particulars of the charges to which the equity of redemption is subject.

Perhaps some of your readers can refer me to some authority on the point. I have looked at a fair number of registers of mortgages, but have never seen an entry of any mortgage which was not created by the company.

I suggest it would be advisable in any amending Act—if the point has not been seen by someone else—to provide that s. 100 should be brought into line with s. 93 and s. 100 should only deal with mortgages *created* by the company.

London, E.C.2. E. T. HARGRAVES.
4th May.

[The point raised by Mr. Hargraves is an interesting one upon which we can find no direct authority. All the text-writers seem to have assumed that s. 100 applies only to mortgages created by a company. Mr. G. W. Wilton, K.C. (of the Scots Bar), in his "Company Law and Practice in Scotland," says that the section "was designed merely for the purpose of enabling creditors readily to see the particulars of effectual securities in ordinary form which a company may have granted from time to time." Section 101, sub-s. (1), rather bears out this view. But it may well be argued that on its language s. 100 has a wider ambit than has generally been assumed. It would be well, therefore, to have this possible ambiguity removed in the present Bill.—ED., *Sol. J.*]

The Land Charges Act, 1925.

Sir, I wish to call attention to the utterly perplexing way in which the clauses of the Land Charges Act, 1925, are allowed to operate as regards the registration of encumbrances.

My firm was recently concerned in the sale of a freehold factory at "Blackacre," in which we were acting for both the vendors and the purchasers. The vendors were three co-owners one of whom had encumbered her share after 1st January, 1926. They, of course, sold under the Law of Property Act, Schedule 1, Part IV, para. 1 (3) as trustees for sale, and the case gave no trouble at all until searches were made for encumbrances. It then appeared that there was an entry of a puisne mortgage on the register of land charges affecting, what was described in the register, as a freehold factory at Blackacre, the puisne mortgage being created by one of the three owners, but the entry treating her as though she were owner of the entire property, and there were also two land charges registered as affecting land at Blackacre.

On my approaching the solicitors, who effected these registrations, they sustained their position and stated that, as it was quite clear that only a one-third share was dealt with under the registered documents, I should simply disregard the entries on the register.

This, however, entirely ignores the position which will arise if my clients hereafter decide to deal with the property. Full explanation will have to be given of the entries which will in fact cast a doubt upon the title. In other words, entries which are supposed to be "behind the curtain" and to affect only the proceeds of sale of the one-third share, are described in the register as relating to land.

There ought, surely, to be some censorship over these entries to avoid a position which is both misleading and very embarrassing.

London, E.C.3. G. E. W.
15th May.

[We agree that the registration is a nullity and attributable to the mistake of the solicitors acting for the incumbrancer: it serves no purpose whatever. To supervise the register would, however, involve the payment of fees wholly incommensurate with the benefits which would thereby result. The register is in fact made by the legal profession, and it will thus be their fault in every case where the entries are improper or insufficient.—ED., *Sol. J.*]

Signature by Surviving Justice of Case Stated.

Sir,—Referring to the "Current Topic" which appeared in your issue of the 12th inst., and to the speculation as to what would happen if all the justices died before the case was stated, it may, perhaps, interest readers of THE SOLICITORS' JOURNAL to hear of a case where the problem actually arose—not, indeed, before justices, but before Commissioners of Income Tax.

Some twenty years ago I appeared as counsel for a taxpayer in an appeal before two of the local commissioners. The decision was in favour of my client, and the surveyor asked for a case. The draft case went backwards and forwards many times until I finally appended a note in the appropriate ink that I could not accept the surveyor's latest amendments, and as there seemed no possibility of agreement the case would have to be settled by the Commissioners. The next thing I heard was that both the Commissioners had died, and that the clerk to the Commissioners proposed to state and sign the case himself. To this I objected upon the ground that the only persons who could state what the facts were which they had found were the Commissioners who had heard the case, and decided in favour of my client. After some delay a reply was received intimating that the law officers had been consulted, and had advised that the objection was bad, and stating that the case would be proceeded with; and this was in fact done. I settled, and my solicitors duly delivered, points for argument, including the objection as to the signing of the case. At the last moment, however, the solicitors for the authorities wrote and said that the appeal would be abandoned.

15th May. E. S. B.

[We are greatly obliged to our correspondent for his interesting letter.—ED., *Sol. J.*]

Point in Practice No. 1213—Income Tax—Personal Allowance on Annuity, etc.

Sir,—Your answer to the above question states that B (who is paid by trustees £1,000 a year, without deduction of tax, out of income from trust funds which is taxed at source), is entitled to reclaim tax in respect of personal allowance, etc. Is it to be understood that your opinion is that she is entitled to reclaim the tax and retain it, or should she pay to the trustees for the benefit of the residuary legatees such proportion of the tax recovered by her as the £1,000 bears to her total net income in accordance with the rules laid down in *In re Pettit*, 1922, 2 Ch. 765? A question has arisen in my office as to whether an annuitant is entitled to retain tax recovered in respect of an annuity bequeathed "to be paid free of all deductions (including income tax)," and counsel relying on *In re Pettit* has advised that a proportion of the tax should be paid to the trustees.

If your opinion on the above could be given in your columns I shall be extremely obliged.

London, E.C.2. SUBSCRIBER.
17th April.

[The reference in the answer to point (*b*) of *Q.* 1213, should be s. 21 (2), and not s. 16 (2) of the F.A., 1920. The case propounded in that question is distinguishable from *Re Pettit*, quoted by you, in that the allowance is discretionary, whereas in *Re Pettit* it was fixed. In the absence of an express decision on a discretionary trust under a will, the question whether the object of it, when the amount of it has been fixed, should remit the personal allowances she has recovered to the trustees for the benefit of the residuary legatee, must be a matter of opinion, but that given here is that she would not be bound to do so, for the trustees would be deemed to have fixed her allowance subject to the usual incidents of an allowance of such a figure, and one such incident would be the recovery of money paid as tax under the sections and sub-sections mentioned in the answer to *Q.* 1213. If, however, the allowance in the case put by you is a fixed one, *primâ facie Re Pettit* would apply, and if counsel with the will before him has so advised, the questioner can, I think, safely act on his opinion.—ED., *Sol. J.*].

Points in Practice—Vendor and Purchaser. Town Planning Scheme—Query 1231.

Sir,—With reference to your answer to the first portion of this query as to the power of the local authority to refuse to pass plans which comply with the bye-laws, but not with the provisional requirements of the town planning scheme not actually prepared, may I direct your attention to Memorandum C. 34, issued to local authorities by the Ministry of Health, para. 13 of which is as follows:—

> Where a town planning scheme is in course of preparation for any part of a district, the position as regards any development in advance of it should be ascertained. The fact that a scheme is in course of preparation does not preclude the carrying out of works in accordance with the bye-laws and statutory provisions in force in the district, but any building or other development after the date of the local authority's decision to prepare the scheme (except work done for the purpose of finishing a building, or carrying

out a contract entered into before that date) is liable to be pulled down, removed or altered, without compensation, if found to contravene the scheme when approved, unless permission has been obtained for the work to proceed in pursuance of a special or general Order of the Minister under s. 45 of the Housing, Town Planning, &c., Act, 1919 (which was re-enacted as s. 4 of the Town Planning Act, 1925). The Minister has made a general order under the first-mentioned section (the Town Planning (General Interim Development) Order, 1922), by which local authorities who have town planning schemes in preparation can grant "permission" for development subject to compliance with such requirements as they may reasonably impose with a view to securing the objects of the scheme. The order provides for an appeal to the Minister against any of these requirements or against the withholding of permission.

It would therefore appear that in such a case, the local authority have no power to refuse to pass the plans, but they may refuse permission to the owner to proceed contrary to the provisional town planning scheme, and, subject to his appeal, pull down the building if it is contrary to the scheme when approved. A. E. L.

[The memorandum from the Ministry of Health does not, of course, bind a judge in construing an Act of Parliament, or even one of the Minister's regulations. Assuming, however, that this correspondent's conclusion is correct, the issue whether a local authority may refuse to pass plans, or, not having such power, may nevertheless pass the plans and then refuse permission to an owner to proceed with the work under them, and destroy the work when done without such permission, appears somewhat academic. Probably an owner forbidden to build in accordance with his plan, duly passed, would have preferred a straightforward refusal which could raise no false hopes.—ED., *Sol. J.*]

Reviews.

A History of Lloyd's. By CHARLES WRIGHT and C. ERNEST FAYLE. Published for the Corporation of Lloyd's by Macmillan & Co., Ltd., London. 1928. pp. xxi, 475. 25s. net.

This very handsome and admirably illustrated volume is a welcome and valuable addition to the literature relating to the institutions of the City of London. With great clarity and precision the story is told of the origin and development of the corporation of Lloyd's, which is known as the hub of the marine insurance world. As it originated in the meeting of a small group of seventeenth century underwriters in the coffee house of Edward Lloyd, it has sometimes been said, although incorrectly, to have been founded by him. Although, in some respects a remarkable man, Edward Lloyd did not found what we now know as Lloyd's, but, owing to the accident that his coffee house found favour with his underwriting customers, his name became, and has remained, linked with the work they carried on. From Lloyd's coffee house the underwriters made several migrations, the chief being to the Royal Exchange, and from there to the palatial building in Leadenhall-street, auspiciously opened a few weeks ago by His Majesty—an event which naturally has made the present volume particularly opportune. It is not, indeed, the first history of Lloyd's. Half a century ago Frederick Martin, the first begetter of the "Statesman's Year Book," brought out his "History of Lloyd's and of Marine Insurance," but that work, although not without merit, has been totally eclipsed by the present volume, whose authors have devoted, as is evident on every page, an amount of research, exhaustive and minute, which gives it rank as a first-class authority. To the lawyer it has a particular interest for the light it throws on the evolution of the policy of marine insurance, a document which, owing to its strange patchwork of tautological and inconsistent clauses, its archaisms and omissions, has had many hard things said of it. Mr. Justice Buller long ago described it as "an absurd and incoherent instrument," and later writers have been still more uncomplimentary in their criticisms of its language and framework; but, despite all this, it has emerged triumphantly from the test of practical use and been accepted as a universal model. Almost every clause in it, say the authors, has been consecrated by centuries of usage, and almost every word has been judicially interpreted. It is, therefore, not surprising that underwriters are shy of departing from one iota of its terms, refusing even to omit from its heading the mystic letters "S.G.", which, for over a century, have puzzled commentators, but whose meaning and history have now been discovered and set out by the authors, who are to be congratulated on having solved what was deemed to be the insoluble. But the story of the development of Lloyd's policy is by no means the only matter of interest in the volume, for it tells also of the notable part played by Lloyd's in the great war periods, of the distinguished men whose names are linked with its history, of the romance of the *Lutine*, and of the extraordinary expansion of the corporation's activities in recent days to include non-marine risks, a branch of business which we are told grew from £366,000 in 1904, to £13,000,000 in 1921. Save for the fact that it is a little heavy to hold comfortably, the book is in every way excellent; it should find a place in every well-equipped library.

Books Received.

Mews' Digest of English Case Law. Containing the reported decisions of the Superior Courts, and a selection from those of the Scottish and Irish Courts to the end of 1924. Second Edition, 1928, under the general Editorship of Sir ALEXANDER WOOD RENTON, K.C.M.G., K.C., SYDNEY E. WILLIAMS and WYNDHAM A. BEWES, of Lincoln's Inn, Barristers-at-law. Vol. XXIV. Comprising a complete Table of Cases in Vols. I to XXIII inclusive. London: The Solicitors' Law Stationery Society Ltd., 104-107 Fetter-lane, E.C.4, and Branches; Sweet & Maxwell, Ltd. and Stevens & Sons, Ltd., Chancery Lane.

Statutory Rules and Orders, other than those of a Local Personal or Temporary character, issued in the year 1927; and Appendix of Prerogative Orders; Classified List of Local Orders; Tables shewing effect of Legislation; and Index. Medium 8vo. pp. 2012 (with Index). H.M. Stationery Office. 35s. net.

Chronicle Table and Index to the Statutes, covering the Legislation to 31st December, 1927. 43rd Edition. Vol. I. Table of all the Statutes. Medium 8vo. pp. ix and 737. Vol. II. Index to the Statutes in Force. H.M. Stationery Office. £3 16s. net.

Butterworth's Workmen's Compensation Cases. Vol. XX (New Series). His Honour Judge RUEGG and EDGAR DALE, Barrister-at-Law, assisted by J. ALUN PUGH, Barrister-at-law. Large Crown 8vo. pp. xix and 864 (with Index), 14. Butterworth & Co. (Publishers), Ltd., Bell-yard. 22s. 6d. net.

International Law as applied to Foreign States. Being an Analysis of the Juridical Status of Foreign States in American Jurisprudence. 1928. JULIUS J. PUENTE, LL.M., of the Chicago Bar. Demy 8vo. pp. 299 (with Index). Burdette J. Smith & Company, Chicago. $5 net.

British Death Duty Acts, 1796 *to* 1924. Supplement No. 4, containing relative matter for the years 1926-1927. Medium 8vo. Paper, pp. 42 (with Index). H.M. Stationery Office. 2s. 6d. net.

The Cambridge Law Journal. Vol. III. No. 11. 1928. Stevens & Sons, Ltd., 119/120 Chancery-lane (for the Cambridge University Law Society). 5s. net.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in duplicate. Each copy to contain the name and address of the subscriber. To meet the conveniences of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Bastardy—Agreement of Putative Father to Maintain—Record of Arrears.

Q. 1246. A had a daughter B, who in September, 1922, gave birth to an illegitimate child of which C is the father. After considerable correspondence an agreement was arrived at which is embodied in the correspondence whereby C agreed to pay A a weekly sum towards the maintenance of the child until sixteen years of age. B died in December, 1923, and the child has been brought up by A. By October, 1926, certain arrears had accumulated, and A took proceedings against C, and by consent judgment in the County Court was given in February, 1927, for the arrears and costs. By this judgment £10 was to be paid within twenty-eight days, and the balance 12s. every twenty-eight days. C then filed his petition and has subsequently been adjudicated bankrupt but has not been discharged. A proved in the bankruptcy for the amount of the judgment and costs only, but no dividend was paid. C is now married and earns a substantial sum each week. (1) Have the bankruptcy proceedings discharged the monthly instalments of 12s. under the judgment? (2) Can a fresh action be maintained by A against C to recover instalments that have accrued due subsequently to the bankruptcy proceedings under the original agreement? (3) Has A any remedy against C and if so what? (4) Can A apply to the guardians for maintenance in respect of the child, and can the guardians take any steps against C in respect thereof? A and his wife are very reluctant to part with the child.

A. (1) This is not certain. Bankruptcy is not a discharge of a promise to the mother to allow her a weekly sum for the support of an illegitimate child: *Miller* v. *Whittenbury*, 1808, 1 Camp. 428. But A chose to prove in the bankruptcy for the whole amount of the judgment, and he is probably bound by his election. (2) In our opinion, yes, on the case cited above, supposing A is entitled to one at all (see (3)). (3) This turns on the terms of the agreement. Ordinarily an agreement is not enforceable after the mother's death, *James* v. *Morgan*, 1909, 1 K.B. 567; 25 T.L.R. 267. But, as the agreement embodied in the correspondence here has been once enforced in the County Court since B's death, its terms presumably differ from those in the case cited, and justify enforcement. But judgment being given by consent may have led to a point not being raised which might have been. A has no other remedy, unless perhaps, under s. 3 of the Affiliation Orders Act, 1914, but it would seem that the mother's evidence is essential, see this point discussed, 86 J.P.N., pp. 18 and 42. A might seek an order under the Adoption of Children Act, 1926, with a sanctioned payment under s. 3 (*c*) from the putative father. (4) A can make the child chargeable, but the guardians cannot get an order against the father after the mother's death, see the wording of s. 5 of the Bastardy Laws Amendment Act, 1873. The guardians are unlikely to give out-relief.

Administration—Assent—Persons in whose Favour it can be made.

Q. 1247. A testator who died in 1904 appointed A.B. and his wife, executors and trustees, and gave his house to the trustees to permit his wife to live there rent free during her life or to have the net profits. A discretionary power was given to the trustees to mortgage the house, and out of the mortgage money to pay the widow 5s. a week. The testator directed the trustees to sell the house at the death of the widow and divide the proceeds amongst children. The trustees mortgaged in 1910 and in 1927 the mortgage was paid off, the receipt stating that the principal and interest were paid by the trustees. The widow has since died intestate, and A.B. has agreed to sell the house to a son, one of the beneficiaries. It is assumed in view of *Re Bridgett & Hayes*:—

(1) That grant of administration must be obtained by one of the next-of-kin of the widow.

(2) That the Administrator may make an assent in favour of A.B.

(3) That A.B. must appoint another trustee to join him in selling and to receive the purchase money.

It has been suggested that where a settlement comes to an end on death of the tenant for life since 1925, the trusteeship also ends. Would you kindly say, if there is no trust for sale (the trustees of the pre-1925 settlement being directed to hold upon trust for a beneficiary absolutely) whether it is the duty of the personal representative of the life tenant to assent direct to the vesting in the beneficiary, thereby ignoring the trustees in whose hands the settlor or testator placed the property and the trust or whether he should assent to vesting in the trustees.

A. The answers to (1), (2) and (3) are in the affirmative. If the beneficiaries under the trust for sale arising by virtue of the testator's will are all *sui juris* and absolutely entitled, they can put an end to that trust for sale and then call upon the personal representative of the widow to assent directly to them (if not more than four in number); see Ad. of E.A., 1925, s. 36 (1). In such a case the trustees can be ignored.

Intestacy—Nomination under Industrial Societies Act—Hotchpot.

Q. 1248. A.B. died intestate leaving gross estate a little over £400 and net estate about £400. He had five children all of age. His estate consisted partly of £120 in an industrial and provident society, and £100 of this amount was nominated to one son. There is no evidence of A.B.'s intention when the amount was nominated, but he resided with the nominee. Your opinion is desired as to whether the nominee should first take the £100 and one-fifth of the residue or whether when he takes the £100, that being more than one-fifth of the estate, he should share no further in the distribution.

A. It is assumed that the nomination was properly made (see Industrial and Provident Societies (Amend.) Act, 1913, s. 5, amending the Act of 1893). If the deceased left a widow she took the unnominated residue: see Ad. of E.A., 1925, s. 46 (1) (i). If he left no widow, it is extremely difficult to decide (there seems to be no express statutory provision or any case governing the matter) whether the nominated sum must be taken into account in the distribution among the five sons. The residuary estate of an intestate is held in such a case upon "the statutory trusts" for his issue: *ib.*, sub-s. (1) (ii). Section 47, which defines the "statutory trusts," provides (see sub-s. (1) (iii)), that "any money or property which, by way of advancement or on the marriage of a child of the intestate, has been paid to such child by the intestate or settled by the intestate for the benefit of such child, shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or settled, or settled in or towards satisfaction of the share of such child, and shall be brought into account." The opinion here inclined to is that the son can claim his share of the

residue without accounting for the £100 nominated; for, it may be argued that as the deceased was living with the son, the nomination was made by way of payment for keep and care, and not by way of advancement or settlement. Such a consideration would also suggest a contrary intention appearing from the circumstances. Further, the object of para. (iii) *supra*, seems to be to provide for bringing into account advances actually made or covenanted to be made by the intestate during his lifetime: see 2 "Wolst. & Cherry," p. 564, whereas the nomination is a provision taking effect on the nominator's death only.

Settlement—Appointment of New Trustees—Correct order of Procedure.

Q. 1249. Can the surviving personal representatives of a testator, dying after 1925, whose will settled land, who are also the S.L.A. trustees by virtue of s. 30 (3) of S.L.A., 1925, appoint a new and an additional S.L.A. trustee before the signature of a vesting assent in favour of the tenant for life?

A. It is necessary to distinguish clearly between the S.L.A. trustees and the general trustees of the will. As the complete settlement consists of the trust instrument and the vesting document it would appear improper to attempt an appointment of new and additional S.L.A. trustees before the signature of the vesting assent. The correct order of procedure would seem to be: (1) The vesting assent. (For a precedent see S.L.A., 1925, Sch. I, Form 5). (2) An appointment of a new and an additional S.L.A. trustee of the settlement by way of deed supplemental to the vesting assent. (3) A declaration supplemental to the vesting assent declaring who are the trustees of the settlement for the time being for the purposes of S.L.A., 1925. (4) A memo endorsed on the vesting assent recording the names and addresses of the S.L.A. trustees, and (5) if desired a further appointment of an additional and a new trustee (preferably the same individuals) for the general purposes of the will.

Undivided Shares—Each held on Various Trusts—Bare Trustee—L.P.A., 1925, 1st Sched., Pt. IV, paras 1 (1), 1 (4).

Q. 1250. By his will (proved in 1873) B gave his residuary estate, which included certain improved leasehold ground rents, to his trustees in trust for his wife for life, and then in equal moieties between E and G, Mrs. B died many years ago. E sold his moiety to T, who died in 1917, having by his will (proved 1917) given his residuary estate, which included his moiety of these ground rents, among his three sons absolutely. G by his will (proved 1892) gave his moiety of the ground rents to his wife for life, and then to his son absolutely, who died intestate in 1896. Mrs. G, who was also one of the trustees of B's will, died on 24th May, 1926, and probate limited to the land settled by the will of G, which included freehold property, was granted to the surviving trustee of G's will. It is now desired to sell the leasehold ground rents as a whole, and we act for the parties interested in both moieties. L, is the surviving trustee of B's will. Are we correct in assuming that on 1st January, 1926, the ground rents were vested in Mrs. G, and L as the trustees of B's will, as trustees for sale under the L.P.A., Sched. 1, Pt. IV, 1 (1), and that all that is required for the sale is for L to appoint another trustee to act with him?

A. Trustees of a will take only so much of the legal estate as the purposes of the trust require, see rule stated and cases collected "Hawkins on Wills," 3rd ed., p. 173. On the will as recited above they appear to have taken, at most, the legal estate for the life of the widow, but for the proper determination of the question a view of the will as a whole would be necessary. If the trustees did not take the full legal estate, the above was clearly a para. 1 (4) case on 31st December, 1925. The suggestion here made is that Mrs. G and T's three sons should appoint L and another trustee under para. 1 (4) (iii), and L should appoint the other trustee by virtue of all powers, etc. The title will then be in order on either supposition.

Undivided Shares—One Settled Upon Trust for Sale—Title—L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (4).

Q. 1251. In 1921 a dwelling-house was conveyed to A and B as joint tenants. It was mortgaged to a building society. A month later a marriage settlement was executed by A in contemplation of his marriage with B, in which was a recital: "And whereas the said A is seised in fee simple in possession free from incumbrances of a moiety of the dwelling-house and hereditaments hereinafter described." By the marriage settlement A conveyed *all* his moiety in the freehold dwelling-house to C (his sole trustee) and his heirs to the use of A until the said intended marriage and after the solemnisation thereof to the use of C in fee simple upon trust that C should at the request of A and B sell the said dwelling-house and invest the proceeds upon the trusts thereinafter declared to pay the rents and profits to the parties entitled under the settlement, being the usual marriage settlement trusts. Power of appointing new trustees vested in A and B. A and B have now entered into a contract to sell. Who will be parties to the deed as vendors, and in whom is the legal estate at the present time vested? Who will give a receipt for the purchase money?

A. The joint tenancy was severed by A's conveyance. C held the moiety as trustee, and therefore on 31st December, 1925, this was a para. 1 (4) case, and the property has vested in the Public Trustee. B and C can divest him by appointing new trustees under para. 1 (4) (iii) (as to C, see *re Cliff*, 1927, 2 Ch. 94), but it would be best if A joined in also. Two new trustees should be appointed, and they will give the receipt. They will be justified in paying a moiety to C on his sole receipt, for he is not a trustee of "land": see L.P.A., 1925, s. 205 (1) (ix), T.A 1925, s. 68 (6).

Settled Land—Subject to Joint Power of Appointment—Title—Whether by Tenant for Life—Reversioner or Otherwise.

Q. 1252. In 1915 A and B (husband and wife) purchased a dwelling-house which was conveyed as follows: Unto the said A and B in fee simple, upon such trusts and subject to such powers and provisions as the said A and B should from time to time by any deed or deeds, revocable or irrevocable, jointly appoint. And in default of, and subject to any such appointment, and so far as any such appointment should not extend to the use of the said A and B during their joint lives, without impeachment of waste. And from and immediately after the death of either of them in the lifetime of the other to the use of the survivor of them during his or her life, without impeachment of waste; and from and after the death of such survivor to the use of their son C in fee simple. The property would now appear to be settled land, but no vesting deed has been executed. A and B are desirous of selling the property, and having regard to the principle of *Re Alefounder's Will Trusts*, 1927, 1 Ch. 360, it is considered that such sale can be effected by A, B and C, all of whom are *sui juris*, and in whom the equitable and legal estates in the property are vested. By adopting this plan a conveyance by one deed alone would appear to be quite effectual and avoid the expense of using the machinery of the S.L.A., 1925, which would involve an appointment of trustees, a vesting deed, conveyance and a deed of discharge of such trustees.

A. Title might perhaps be made in the manner indicated, but a purchaser would not be obliged to accept it, see L.P.A., 1925, s. 42 (1) (*b*), and would not be well advised to do so, for the conveyance to him would not override any incumbrance on the reversion, like a conveyance under the S.L.A., 1925. See generally as to this "Everyday Points in Practice," p. 215, Case 8A. Title might also be made if A and B made appointment in their own favour in reliance on *Re Alefounder*, 1927, 1 Ch. 360. Otherwise, title must be made under the S.L.A., 1925. For this purpose A, B and C could appoint themselves or any of them trustees for the purposes of the Act under s. 30 (1) (5). Sale thus would involve the execution of two very simple deeds, and a deed of discharge does not seem necessary.

In such case A and B will convey under the S.L.A., 1925, ss. 19 (2) and 72.

Mortgage—Payment off of Prior Mortgages by Puisne Mortgagee—One Prior Mortgagee being a Building Society—Procedure and Effect.

Q. 1253. A, who was the wife of an undischarged bankrupt, mortgaged property to a building society before the L.P.A., 1925, came into force, and also granted a second mortgage. A third mortgage was granted on the 14th October, 1927 (which was about six weeks before the bankruptcy of the borrower), and the third mortgagee proposes paying off the second mortgage and wishes to take over the property. There is no margin in the property for the Official Receiver, and it is questionable whether the third mortgagee will be able to get out. Would you advise joining the Official Receiver, or the trustee in bankruptcy (when the trustee is appointed), in the conveyance, from the building society to the third mortgagee, and how would you deal with the repayment of the second mortgage by the third mortgagee? I take it the usual receipt on the second mortgage would be sufficient, setting out that the payment was made by the third mortgagee.

A. It is not stated whether the second mortgage was made before 1926, but, if it was, and was made in the usual form, the building society took a term of 3,000 years on 1st January, 1926, under the L.P.A., 1925, 1st Sched., Pt. VII, para. 1, the second mortgagee a term of 3,000 years and a day under para. 2, and the mortgagor the fee subject to the term under para. 3. The questioner does not make it at all clear whether both husband and wife were bankrupt. Assuming, however, that the wife as owner of the property is bankrupt, the third mortgagee (whose term should have been made 3,000 years and two days on a well-drawn deed) may redeem those above him without consulting those below if, as is probable, the former are willing to accept payment from him, without bringing in the Official Receiver or trustee in bankruptcy—though he might have to do so on a redemption action, see *Fell* v. *Brown*, 1787, 2 Bro.C.C. 276. As to the procedure, however, which ought to be quite simple, a difficulty on the receipt provisions arises from the words "not entitled to the immediate equity of redemption" in the L.P.A., 1925, s. 115 (2). *Primâ facie*, a second mortgagee of two, though not entitled to the equity of redemption as a whole, is entitled to the "immediate equity of redemption," for he is next in order to redeem, see "Fisher," 6th ed., para. 1934. On this interpretation redemption by a second mortgagee would, under s. 115 (1) and (11), discharge the entire mortgaged property from all claims under the mortgage—a disastrous result from the point of view of the puisne mortgagee who pays off. No doubt a judge would strive against such a conclusion, but, on the principle of "safety first," it seems best to avoid any chance of such a possibility, and it is suggested that the third mortgagee should take transfers with declaration against merger, or possibly receipts in the name of a nominee. The Official Receiver may then be foreclosed, or will probably convey the interest vested in him for a nominal consideration.

JURORS AND REMITTED FINES.

When Mr. Justice Swift was about to begin the hearing of an action in the King's Bench Division after the luncheon adjournment on Friday last, it was found that two of the twelve persons summoned to form the jury had failed to appear. After ten minutes had elapsed the parties consented to try the action with ten jurymen. His lordship said that the absentees would be fined £10 each, but that he would later listen to their explanation with a view to remitting the fine. Shortly afterwards they appeared in court.

At the end of the day's sitting they tendered their apologies to his lordship, explaining that they understood that they had been released until 2.30 p.m., and not 2.15 p.m. His lordship accepted the apologies and remitted the fines, adding that the two men would not be allowed to escape their services but would be put into the next special jury panel.

NOTES OF CASES.

Court of Appeal.

In re a Debtor, No. 99 of 1928.

(Lord Hanworth, M.R., Lawrence and Russell, L.JJ.,) 27th April.

Bankruptcy—Moneylenders Petition—Detailed Statement—Moneylenders Act, 1927, 17 & 18 Geo. 5, c. 21, s. 9 (2)—Whether applicable to Loans made before the Act.

Appeal from a decision of the Registrar in Bankruptcy. In January, 1927, the appellant lent two sums of £120 and £195 to a borrower, these sums being in respect of a series of former transactions, plus interest. He issued a writ in July, 1927, and obtained judgment on 10th January, 1928. On 23rd January, he served a bankruptcy notice, and on 31st January presented a bankruptcy petition, which came on for hearing on 12th March, 1928. The Registrar decided that he could not grant the petition until the appellant had complied with s. 9 (2) of the Moneylenders Act, 1927, which directs that: "No proof of a debt due to a moneylender in respect of a loan made by him shall be admitted for any of the purposes of the Bankruptcy Act, 1914, unless the affidavit verifying the debt is accompanied by a statement shewing in detail (*a*) the amount of the sums actually lent to the debtor and the dates on which they were lent, and the amount of every payment already received by the moneylender in respect of the loan and the date on which every such payment was made; (*b*) the amount of the balance which remains unpaid . . . (details specified as to distinguishing interest and principal); (*c*) (details to be given as to interest). The appellant contended that s. 9 (2) was only applicable to loans made after 1st January, 1928, when the Act came into force, and appealed against the Registrar's decision. The debtor did not appear. The Court dismissed the appeal.

Lord Hanworth, M.R., said that statutes dealing with procedure were usually retrospective. In *Gardner* v. *Lucas* (3 App. Cas. at p. 603), Lord Blackburn said that "Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be." The appellant contended that it was not really a matter of procedure, but one affecting his rights under the contract. He (Lord Hanworth, M.R.) could not agree. He thought that s. 9 (2) applied to loans made before the Act as well as to loans made after its commencement.

Counsel: *Woodgate*, for the appellant.
Solicitors: *Ivor Samuel & Co.*

[Reported by G. T. Whitfield-Hayes, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Windsor Steam Coal Co. (1901) Ltd.

Maugham, J. 24th and 25th April.

Company—Misfeasance of Liquidator—Without wilful Default—Indemnity to Liquidator—Trustee Act, 1925, 15 Geo. 5, c. 19, s. 30, sub-s. (1), s. 68, sub-s. (17). Summons.

This was a summons taken out by a contributory to a company asking for a declaration that the respondent as liquidator had been guilty of misfeasance and breach of trust in paying away a sum of £15,000 to the wrong persons. The facts were as follows:—By an agreement, dated the 16th of October, 1919, the Windsor Coal Company, appointed a firm sole selling agents of the output of their colliery for the term of twenty-one years, and the company agreed "to pay the agents as remuneration for their services upon the coal raised and sold and on the coal raised and coked in each year the sum of 3d. per ton up to 200,000 tons and upon the balance

2d. per ton." The company did not carry on business at a profit, and on 27th May, 1925, entered into a contract to sell its undertaking to another colliery company, and months later went into liquidation, the respondent, R. H. Marsh, being appointed liquidator to wind the company up. The selling agents asserting that the company had committed a breach of their contract by selling their undertaking to the colliery company, claimed to prove in the winding up for their commission which they had failed to earn. The liquidator settled their claim for £15,000, but, in fact, the company had committed no breach, and the firm were entitled to no damages. The liquidator had acted quite honestly but mistakenly, and claimed protection under the Trustee Act on the ground that he was a trustee.

MAUGHAM, J., after stating the facts, said:—It is not suggested that the liquidator has acted otherwise than honestly, but he has paid the sum of £15,000 to persons who had no claim, and the question is whether he is protected by the Trustee Act, 1925. Section 30 of that Act provides that "a trustee shall be chargeable only for money and securities actually received by him . . . nor for any loss, unless the same happens through his wilful default." The same indemnity was given by s. 24 of the Trustee Act, 1893. Is the liquidator a trustee within the meaning of s. 68, sub-s. (17), of the Trustee Act, 1925? Although, in some respects, a voluntary liquidator is a trustee, he would be more correctly described as the agent for the company: see *Knowles* v. *Scott*, 1891, 1 Ch. 717. For many years the liability of directors and liquidators has been ascertained on the footing that they were not protected by s. 24 of the Trustee Act, 1893, and by parity of reasoning they are not protected by s. 30 of the Trustee Act, 1925, a liquidator has statutory duties to perform and in my judgment is not protected by the section if he pays away by mistake the moneys of the company to persons not entitled, even though, as here, it was an honest mistake. I am not prepared to hold that in such a case a liquidator is not liable unless he has been guilty of wilful default. A decision to that effect must come from a higher tribunal. There will be an order for the respondent to repay the £15,000 with interest at 5 per cent.

COUNSEL: *Gavin Simonds*, K.C., and *Lionel Cohen Topham*, K.C., and *R. J. T. Gibson*.

SOLICITORS: *Churchill, Clapham & Co.*, for *Elfyn David and Hamblin*, Cardiff; *Ingledew, Sons & Brown*, for *Downing and Handcock*, Cardiff.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

In re Spencer and Hauser's Contract.

Tomlin, J. 27th April and 2nd May.

VENDOR AND PURCHASER—CONTRACT TO SELL AS "TRUSTEES FOR SALE"—OFFER TO MAKE TITLE AS "PERSONAL REPRESENTATIVES"—WARRANTY OF TITLE—PURCHASER HAD TO COMPLETE.

Vendor and purchaser summons.

A special condition in a contract to purchase certain freehold houses stated that the vendors were selling as trustees for sale under the will of one R. E. E. Spencer, who died in April, 1923. After abstract delivered the purchaser delivered a requisition as follows: "The vendors purport to sell as trustees for sale under the will of R. E. E. Spencer. There is no trust for sale contained in the said will, and that being so the vendors have no right to sell and still less to convey the property. They are therefore unable to carry out the contract which they have entered into, and the purchaser requires the repayment of his deposit and the sale fees, with interest and costs." The vendors replied by letter that the words "trustees for sale" should have read "personal representatives," and they also pointed out that the personal representatives and the trustees "with a power of sale" in the will were the same persons, and their implied covenants howsoever they conveyed would be the same. Correspondence passed, the vendors contending that a good title had been shown, and also saying that they were prepared to state in writing that they had not given or made any assent or conveyance in respect of the legal estate in accordance with s. 36 (6) of the Administration of Estates Act, 1925, and ultimately the vendors took out this summons under s. 49 of the Law of Property Act, 1925, for a declaration that the objection of the purchaser had been sufficiently answered and that a good title had been shown.

TOMLIN, J., after stating the facts and referring to the contract and that the words "as trustees for sale" had been inserted by mistake, said: Under the Administration of Estates Act, 1925, it can fairly be said at any rate that the position of a personal representative selling land is that if he states that there has been no assent the purchaser is not bound to make any inquiry about debts or funeral or testamentary expenses and is bound to accept the title. But the point is not taken that the vendors cannot make a good title as personal representatives, but whether, having regard to the form of the particular contract in question, the vendors are bound to make a title in a particular way, that is as trustees for sale under a will, and if they cannot, although they might make a perfectly good title, as legal personal representatives, whether the purchaser is entitled to repudiate the contract. It seems plain that where a man contracts to sell land stating that his title will start with a certain document, and saying nothing more, he can make a title in any way he likes; but if the contract is to make a title in some particular capacity, whether that is a warranty by the vendor to make the title in that particular way, and however good that title may be that he tenders, whether it can be forced on a purchaser except in accordance with the alleged warranty. It seems to me that it would be a strange construction to place upon a contract for sale of land, unless absolutely compelled by the language, a warranty by the vendor that he is making a title in a particular form, and so far as this particular contract is concerned I do not feel able to hold, having regard to its form, that it does anything more than indicate the method in which the vendors contemplate making a title, although they took upon themselves the obligation of making a good title. But even if the contract must be read as a warranty that title is to be made in a particular way, I still feel great difficulty in coming to the conclusion that the obligation of the contract is not fulfilled by making a good title either by the vendors themselves in some other way, or by the vendors with the concurrence of persons whom they can compel to concur, having regard to the decisions in *In re Baker and Selmon's Contract*, 1907, 1 Ch. 238, and *In re Atkinson and Horsell's Contract*, 1912, 2 Ch. 1. I take the same view as was taken by Swinfen Eady, J., in *In re Baker*, *supra*, as to the true effect of the contract, namely, that it is not really a warranty at all as to the particular form in which title is to be made. It is a contract to make a good title with an indication of the way in which, in the first instance, at any rate, they propose to do it. In my view the vendors are right and can compel the purchaser to accept the title.

COUNSEL: *Topham*, K.C., and *F. McMullan*; *C. J. W. Farwell*, K.C., and *W. Hunt*.

SOLICITORS: *Crossman, Block, Matthews & Crossman*, for *Stanton, Atkinson & Bird*, Newcastle-on-Tyne; *Bell, Brodrick and Gray*, for *Cousins, Botsford & Co.*, Cardiff.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Auchteroni & Co. *v.* Midland Bank Limited (Liverpool).

Wright, J. 2nd April.

BILL OF EXCHANGE—PAID OVER COUNTER—INDORSED IN BLANK—PAYEE ABSCONDS—LIABILITY OF BANK—BILLS OF EXCHANGE ACT, 1882 (45 & 46 Vict., c. 61), s. 59.

The plaintiffs supplied goods to the Nigerian Products Company, who paid for them by accepting a bill for £876 9s. drawn by the plaintiffs and made payable to themselves in three months. The Nigerian Company instructed their bankers, the present defendants, to meet the bill at maturity, which occurred in March, 1924. The plaintiffs' cashier, who was ordered to collect the money from the plaintiffs' own bank, in breach of his instructions, presented the bill over the counter at the defendant bank and received payment, the bill having been indorsed in blank by the plaintiffs. The plaintiffs' cashier absconded with the money, and the plaintiffs brought this action to recover the money from the bank on the grounds (1) that the defendants had held the money in trust for them, or as money had and received, and had improperly parted with it; (2) that the defendants in parting with the money without inquiry had been guilty of negligence; and (3) that in parting with the money the defendants had been guilty of conversion. The defendants pleaded a general denial, and denied negligence because the person who presented the bill was the servant of the plaintiffs. They further said that by indorsing the bill in blank the plaintiffs had estopped themselves from denying that the cashier was authorised to receive the money.

WRIGHT, J., dealing with the ground of negligence, said that it could only exist where there was a duty to take care, and that duty could only arise where there was privity of contract between the parties, which was not the case here. On the claim that the defendants held the money to the use of the plaintiffs, he said that the defendants had never notified the plaintiffs that they had received funds from the acceptors of the bill to meet it, the money was not held on behalf of the plaintiffs, and the claim on that ground also failed. Lastly, on the question of conversion, his lordship referred to the defendants' contention, that the bill being a negotiable instrument they were protected by the Bill of Exchange Act, 1882, s. 59, and he was of opinion in this case that there were no special circumstances to justify the defendants in refusing prompt payment. Judgment for the defendants, with costs.

COUNSEL: *Singleton*, K.C., and *N. J. Laski* for the plaintiffs; *Kennedy*, K.C., and *A. J. Hodgson* for the defendants.

SOLICITORS: *Hall, Hawkins & Co.*, Manchester; *Hill, Dickinson & Co.*, Liverpool.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Luck *v.* Meyler. Lord Hewart, C.J. 24th April.

SOLICITOR AND CLIENT—INSURANCE CLAIMS—MOTOR CAR ACCIDENT—POLICY CONDITIONS—UNDEFENDED ACTIONS—SOLICITOR'S LIABILITY.

The plaintiff, Harold Featherstone Luck, owner of a motor car which was insured with the Anglo-Saxon Insurance Association Limited, was involved in a collision on the 7th April, 1926, between his motor car and a motor omnibus, the latter also doing damage to a garden wall. The plaintiff's policy of insurance covered claims by third parties, but not claims for personal injuries to himself except those of a particularly grave nature specified in the policy. By condition 3 of the policy it was agreed that the holder should not make any admission, offer, promise or payment without the written consent of the insurance company, and that the company should have entire discretion as to the defence, settlement or compromising of any claim under the policy. As a result of the accident the plaintiff sustained a badly cut lip and had to pay £5 towards the damage to his car. On the 10th April, 1926, the plaintiff consulted the defendant, Hugh M. Meyler, a solicitor practising as H. M. Meyler & Co., with reference to the collision. The plaintiff alleged that the defendant undertook to look after his interests in the matter. Proceedings against the plaintiff in respect of the accident were brought by the respective owners of the motor omnibus and the wall, and the defendant in both cases accepted service of process. The plaintiff pleaded that the defendant was guilty of breach of duty and/or negligence in (*a*) failing to notify the plaintiff of the date of hearing of the two actions; (*b*) failing to attend at the hearing of the cases either by himself, counsel or agent; (*c*) allowing in each case judgment for the full amount (altogether £189 0s. 8d.) to be signed against the plaintiff by default; and (*d*) failing to notify the plaintiff of his intention not to appear to defend and/or of the result of the actions. The plaintiff claimed damages from the defendant. The defendant denied negligence or breach of duty and said that the plaintiff requested him to undertake the protection of his interests, but that he was not instructed and did not undertake to defend any proceedings against the plaintiff which might prejudice his right to indemnity under the policy. He further pleaded that it was agreed with the insurance company that they should give him instructions whether or not to defend any claim made against the plaintiff, and that no instructions were given. He also pleaded that the damages claimed were too remote.

Lord HEWART, C.J., giving judgment, stated the facts, and said that he was satisfied that so far as the plaintiff was personally concerned he did leave all his interests in the hands of the defendant as his solicitor. The latter, until a very late moment, did not seem to have appreciated the fact that he was acting as solicitor for the plaintiff, but seemed to have been under the impression that he was, or was about to be, instructed by the insurance company and entitled to look to them for his costs. When proceedings were commenced against the plaintiff, the defendant, as his solicitor, accepted service of process, and by doing so he became naturally the solicitor upon the record. At the eleventh hour, in the case of the action by the owner of the motor omnibus, the defendant discovered that he was not in a position to look to the insurance company for his costs and he thereupon washed his hands of the whole matter without any notice at all to his client, the plaintiff, with the result that judgment was signed against him. A similar course was taken with regard to the second action. His lordship referred to the argument and evidence of the defendant and said that no doubt he was to some extent the victim of a misunderstanding, but it was impossible for him to overlook the fact that he had accepted the duty of solicitor to the plaintiff, and in that capacity had accepted service of process in both of the actions, and he could not avoid his responsibility in them by not communicating with his client, but by communicating with somebody else (the insurance company). In those circumstances he came very reluctantly to the conclusion that the defendant was liable, and the plaintiff was entitled to recover the judgment debt and costs which he had had to pay in both the actions. He added that in his opinion the insurance company had behaved very badly in the case, and that the defendant might think it right to consider the expediency of taking from the plaintiff an assignment of his rights under the policy of insurance. Judgment was accordingly entered for the plaintiff for £189 0s. 8d. and costs. A stay of execution was granted pending notice of appeal within fourteen days.

COUNSEL: Mr. *Serjeant Sullivan*, K.C.; *Julian Fuller*, for the plaintiff; the defendant appeared in person.

SOLICITORS: *Martin & Barry O'Brien.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Societies.

City of London Solicitors' Company.

ANNUAL MEETING.

The nineteenth annual general meeting of the City of London Solicitors' Company was held on 7th inst., at the Guildhall, under the presidency of Mr. Hugh D. Francis, M.C., the master. There were also among those present: Mr. Harry Knox (senior warden), Mr. E. J. Stannard (junior warden), Mr. B. McNair (past-master and hon. treasurer), Mr. T. H. Wrensted, Mr. T. Burrell Baggallay, J.P., Mr. J. Montague Hanslip, J.P., Mr. G. Stanley Pott, Mr. P. D. Botterell, C.B.E., Mr. F. M. Guedalla (senior steward), Mr. J. H. N. Armstrong (junior steward), Mr. R. S. Fraser, Mr. M. C. Matthews, The Hon. G. J. Eliot, Mr. E. G. Roscoe, Mr. S. Syrett, C.B.E., and Mr. Anthony Pickford (City Solicitor), members of the Court of Assistants, Mr. A. S. Hicks (hon. auditor) and Mr. A. T. Cummings (clerk).

The annual report of the Court of Assistants stated the society now numbered 243 members. The members of the court felt it incumbent on them to place on record their sense of the great loss which had been sustained, not only by the company but by the profession as a whole, in the death of the immediate past-master, Mr. A. C. Stanley-Stone. During the past year the court had investigated a large number of questions brought to its notice, upon some of which the assistance of the Law Society had been invoked. These included (1) Questions arising with reference to certain legal aid societies; (2) The preparation and completion by auctioneers of contracts for the sale of land; (3) Right of solicitors to audience before Theatres and Music Halls Committee of the London County Council; (4) Charges by local authorities for certificates under the Land Charges Act, 1925; (5) Members of the Bar advising in income tax matters without the intervention of a solicitor. Sub-committees had met on several occasions to consider various matters, including the Companies Bill, as introduced in the House of Lords. It was considered desirable that amendments should be made in the Bill, and a number had been submitted by the company to the Lord Chancellor, independently of the Law Society. A special committee which had been appointed by the court had prepared a memorandum of objections and observations, and it was considered and approved by the court. The memorandum dealt principally with clauses 32, 33, 43 (8), 71 (4) and 45 of the Bill. It was forwarded to the Lord Chancellor for his consideration and it was duly acknowledged. Copies of the memorandum were also forwarded to Lord Sumner, Sir William Bull, M.P., and Mr. Dennis Herbert, M.P., with a request that they would use their good offices in the House of Lords and House of Commons respectively in furthering the suggestions which had been made. The Bill, as introduced into the House of Commons, had been framed so as to meet the objections raised by the company to clauses 43 (8) and 71 (4) of the former Bill. The court had therefore forwarded to Mr. Dennis Herbert a revised memorandum dealing with clauses 31, 32 and 44 of the present Bill, and had requested him to endeavour to secure certain amendments therein. A special committee of the company had considered questions included in Part I of the Landlord and Tenant Bill which appeared to affect the profession somewhat seriously. Its report, which supported the general principles of the criticisms made in a memorandum issued by the Law Society, was adopted by the court and forwarded to the Home Secretary. The court, having had its attention directed to the unsatisfactory state of procedure followed by the London County Council and other bodies in the promulgation of town planning schemes and the consequent unfair treatment accorded the owners of property in or near the area affected, requested the Law Society to see whether some representations could be made to the Minister of Health asking that statutory rules should now be framed and promulgated as contemplated by the 1925 Act. The court had offered, and the Law Society had accepted, an annual prize of twenty-five guineas during the next three years, to be known as "The City of London Solicitors Company Prize," and to be presented on a certificate of the Law Society by the company to the student under the age of twenty-seven years on the date on which he sat for the examination (being an articled clerk to a solicitor practising within a radius of three-quarters of a mile of the Bank of England), whose answers to the papers in the final examination to equity and common law and bankruptcy, set at the three examinations in any one year, shall have been adjudged the highest in merit (i.e., the aggregate marks of these papers), liberty being reserved to withhold the prize if, in the opinion of the Law Society, no papers are deemed of sufficient merit. It was the hope of the court that the offer of this prize would encourage additional study of those branches of the law which were of special interest to City practitioners.

The Master, in moving the adoption of the report, remarked that the year had been a busier one for the court than usual, particularly as regarded new legislation, either actual or intended. The court had come unanimously to the conclusion that the Companies Bill was, on the whole, a good Bill. It provided for a number of necessary amendments in company law, and, therefore, they considered that, in the interests of the public as well as of the profession, it was not advisable to press for any amendments other than those which in their opinion were absolutely essential. These amendments would be moved at the proper time. He would like to have it put on record that the relations between the company and the parent body, the Law Society, were of the most cordial character. Among the matters which had been referred to the Law Society was the practice referred to in the report of auctioneers preparing and completing contracts for the sale of land, and steps were being taken which it was hoped would secure its discontinuance. Mention was also made in the report of the prize to be offered to clerks articled to solicitors in practice in the City. Many prizes of the kind were awarded in various provincial centres, but hitherto there had been nothing of the kind for clerks articled to solicitors practising in the City. It had been thought well by the court that this should be remedied.

The meeting approved the appointment of Mr. Anthony Pickford (City Solicitor), who had been co-opted to the vacancy on the court caused by the death of Mr. A. C. Stanley-Stone. Mr. A. S. Hicks was re-elected hon. auditor.

At a court held at the conclusion of the meeting the following elections were made: Mr. Harry Knox, master; Mr. E. J. Stannard, senior warden; Mr. F. M. Guedalla, junior warden; Mr. G. L. J. McNair, hon. treasurer; Mr. J. H. N. Armstrong, senior steward; Mr. A. T. Cummings, clerk; and Mr. Wm. Satcher, beadle.

Solicitors' Benevolent Association.

The monthly meeting of the Directors of this Association was held at The Law Society, Chancery-lane, on the 9th inst., Mr. Charles E. Barry (Bristol) in the chair. The other Directors present were Sir A. Copson Peake (Leeds), Messrs. F. E. F. Barham, E. R. Cook, T. S. Curtis, A. G. Gibson, R. Epton (Lincoln), E. F. Knapp-Fisher, E. R. Knight, C. G. May, H. A. H. Newington, R. B. Johns (Plymouth), A. B. Urmston (Maidstone), F. S. Ward (Ipswich) and W. Woolley (Derby). £1,068 was distributed in grants of relief; seventy-two new members were admitted; Mr. E. Gulliford (Southampton) was elected a Director, and other general business was transacted.

The London Solicitors' Golfing Society.

We are informed that the summer meeting of the London Solicitors' Golfing Society will be held on Thursday, the 31st inst., at Walton Heath, when the following prizes will be competed for: Scratch Medal; Prize for best medal score, presented by the Captain (Mr. Sydney Newman); Prize for best nine holes score, handicap limit 11; Prize for best nine holes score, handicap limit 12—24; The Riddell Challenge Cup. The competing members will be the guests for the day of Lord Riddell, the President of the Society, and also at a dinner to be held at the conclusion of the meeting. The closing date for entries, which must be sent, together with the entrance fee of 2s. 6d., to H. Forbes White, Bank-buildings, Ludgate Circus, E.C.4, is the 25th inst.

The Auctioneers' and Estate Agents' Institute.

RESULTS OF 1928 PROFESSIONAL EXAMINATIONS.

There were 876 entries for the Institute Professional Examinations last March, of whom 492 have passed, being: six in the Direct Final Division, 211 Final Division, and 275 Intermediate Division.

The following is the list of prizemen in the Final Division:—Walter Edward Avenon Bull, 1 Frederick's Place, Old Jewry, E.C.2, first in order of merit: the Institute Gold Medal and prize of seven guineas, City Branch Prize, also the Daniel Watney Gold Medal for the highest aggregate of marks in the intermediate and final examinations. Reginald Charles Ward Davey, "The Sun Dial," Horns Lodge, Tonbridge, Kent, second in order of merit: the Institute Prize of five guineas, also the Kent, Surrey and Sussex Branch Prize. Charlie Dennis Pilcher, 117 North Street, Brighton: the Institute Prize of five guineas for being first in order of merit in the subject of valuations.

The Intermediate: Bryan Leolin Richards, 18 Woodberry-avenue, Winchmore-hill, N.21, first in order of merit, the Institute Silver Medal and prize of five guineas. Stanley

Osborn Gillett, Bourne Cottage, Hayes, Kent, second in order of merit. Institute prize of three guineas, also South-East London Branch Prize. George Bartlett, "G" Cottage, Royal Marine Barracks, Stonehouse, Plymouth, Western Counties Branch Prize; William Brown, 30 Sheard's-place, Commercial-street, Batley, Yorkshire Branch Prize; Spenta Cama, 16 Maldon-road, Brighton, Kent, Surrey and Sussex Branch Prize; Hubert Graham Cook, "Oak Lodge," Galley Lane, Barnet, Herts, Beds, Herts and Hunts Branch Prize; John Ernest Hemens, Askham House, Pittville Circus-road, Cheltenham, Bristol and District Branch Prize; Thomas Edward Job, Kent House, Kensington-court, W.3, South-West London Branch Prize; Aubrey Edwin Orchard Lisle, "Roefield," Alperton-park, Wembley, Middx., North and North-West London Branch Prize; Richard Gilbert Moore, 937 Warwick-road, Acocks-green, Birmingham, Birmingham and District Branch Prize; Noel Passingham, 27 Croftdown-road, Highgate-road, N.W.5, West London Branch Prize; Arthur William Richards, "Chilbridge," Wimborne, Dorset, Hants, Wilts and Dorset Branch Prize; Frank Streeton Steed, 2 Hillier-road, Wandsworth-common, S.W., City Branch Prize.

Legal Notes and News.

Honours and Appointments.

Sir HENRY MADDOCKS, K.C., Recorder of Birmingham (who was called to the Bar in 1904 and took silk in 1920); Mr. H. ST. J. D. RAIKES, C.B.E., K.C., Recorder of King's Lynn (who was called to the Bar in 1887 and took silk in 1921); Mr. PAUL E. SANDLANDS, Recorder of Newark (who was called to the Bar in 1900); and Mr. ALFRED T. BUCKNILL, C.B.E. (who was called to the Bar in 1903), have been elected Masters of the Bench of the Inner Temple.

The Hon. Mr. Justice AVORY has been elected Reader of the Inner Temple for the Trinity Vacation and Master of the Library.

The Secretary of State for Scotland has appointed Mr. ANDREW HAMILTON, 1st Class Depute, Sheriff's-Clerk's Office, Glasgow, to be Sheriff-Clerk of Haddington, in the room of Mr. James Petrie, resigned.

Mr. A. F. STEELE, Solicitor, Linlithgow, has been appointed Procurator-Fiscal for the County of West Lothian, in the place of the late Mr. James Kidd, M.P.

Mr. S. C. AUTY, Assistant Solicitor, in the office of Mr. Samuel Parker, Town Clerk of Bolton, has been appointed Deputy Town Clerk of Bramley and Solicitor to the Corporation, in succession to Mr. P. E. Whiteoak-Cooper, recently appointed Clerk to the Epsom Urban District Council. Mr. Auty was admitted in 1922.

Mr. HENRY W. PEACH, Solicitor and Clerk to the Tonbridge Urban District Council, has been appointed Deputy Coroner for the Tonbridge District (Kent). Mr. Peach—who was admitted in 1901—also holds the appointment of Clerk to the S.W. Kent Combined Sanitary District.

Professional Announcements.

(2s. per line.)

Messrs. LAWRANCE, MESSER & CO., Solicitors (Allan Ernest Messer and Stephen Jefferson Gordon), of 14, Old Jewry-chambers, London, E.C., announce that as from the 1st May, 1928, they have taken into partnership Mr. ALLAN JAMES GRAHAM and Mr. WILLIAM GEORGE BACON. The name of the firm will remain unchanged.

Wills and Bequests.

Mr. Robert Francis Harrison, K.C., of Fitzwilliam-square Dublin, a Bencher of King's Inns and in 1892 Professor of Equity at King's Inns, who died on 24th November, aged sixty-eight, left unsettled personal estate in England and the Irish Free State valued at £26,221.

Mr. Henry Lewis, Bridgend, solicitor, who died in February, left estate of the gross value of £2,430. He left the residue of the property "To my wife, the most loyal, devoted and cheerful companion, whose constant care, affectionate sympathy, and Christian example I have ever cherished as a divine blessing upon me." He appointed his wife to be guardian of his children "both of whom I hope will ever strive, and by constant care of and loving devotion to their dear mother mark the sense of their sincere affection of her constant self-sacrifice in all matters for their sake."

Mr. George Tweedle, solicitor, of Todlaw, Duns, left personal estate in Great Britain of the gross value of £9,398.

Mr. James Baker, of Mansfield-road, Manningham, Bradford, formerly solicitor's clerk, left estate of the gross value (so far as can at present be ascertained) of £5,197.

Mr. Arthur Labron Lowe, M.A., of Westfield-road, Edgbaston, Birmingham, and Monks Path Hall, Warwick, Registrar of the Warwick County Court and of the District Registry from 1910-20, whose death on the 7th February, 1928, was announced in THE SOLICITORS' JOURNAL of the 11th February, left estate of the gross value of £58,892, with net personalty £47,512. He gives £100 to the Old Cliftonian Society; an annuity of £52 if still in his service, or of £26 if not, to his cook, Lizzie Jenkins; £50 each to his former clerks, Thomas H. Darby and Ethel May Carter.

AUCTIONEERS' AND ESTATE AGENTS' INSTITUTE.

At the Council Meeting of the Auctioneers' and Estate Agents' Institute, held on Friday last, Mr. Arthur Charles Driver (Messrs. Drivers, Jonas & Co.) of London, was unanimously elected President for the ensuing year.

The following vice-presidents were also elected: Messrs. Hubert Alexander (Messrs. Stephenson & Alexander), Cardiff; Edward W. Eason (Reynolds & Eason), London; C. Roland Field (Messrs. Field & Sons), London; J. Edward Kitchen (Messrs. Oliver, Appleton & Kitchen), Leeds; Geo. F. Page, J.P. (Messrs. Nightingale, Page & Bennett), Kingston-on-Thames; and H. Mordaunt Rogers (Messrs. Rogers, Chapman and Thomas), London.

SPECIAL CERTIFICATE EXAMINATIONS, APRIL, 1928.

At the Special Certificate Examinations held last month there were thirteen candidates in Taxation and Rating, three in Tenant-Right and other Agricultural Valuations, and three in Antique Furniture. The following were the successful candidates:—

Taxation and Rating.—Clarke, Cyril Alexander, 99, Church-road, Hove; Eyles, George Lewis Ernest, "The Firs," Loudwater, High Wycombe, Bucks; Gifford, David Arthur, c/o Messrs. Michael Faraday & Partners, Sir Isaacs Walk, Colchester; Griffiths, John Frederick Knowles, Wrexham-chambers, Prestatyn, N. Wales; Rose, Frederick Charles, 74, Station-road, Redhill, Surrey; Tregear, Reginald William, 6, London-road, Bognor.

Tenant-Right and Other Agricultural Valuations.—Lunn, Ernest John, New Close, Sleeper's Hill, Winchester.

MISAPPROPRIATION BY A SOLICITOR.

Sentence of six months' imprisonment in the second division was passed by Mr. Justice Humphreys at the Central Criminal Court recently on Frederick Cyril Broxholm, B.A. (Cantab.), fifty, solicitor, of Evelyn House, 62 Oxford-street, W., on bail, who pleaded "Guilty" to a charge of converting to his own use £122 8s. 9d. Mr. H. D. Roome, prosecuting, said that the defendant was adjudicated bankrupt in June, 1927, and in his statement of affairs he estimated his liabilities at £24,000 and showed a deficiency of £23,000 odd. Most of the debts in the defendant's bankruptcy were for money lent. For some years he had been insolvent and had been in the hands of moneylenders. Mr. Justice Humphreys, in passing sentence on the defendant as above stated, said that there were many circumstances which differentiated the case from the worst kind of fraudulent misappropriation by a solicitor.

BRITISH CLAIMS AGAINST HUNGARY.

The Board of Trade announce that the Administrator of Hungarian Property has under the powers conferred upon him by s. 1 (xiv) of the Treaty of Peace (Hungary) Orders, 1921-23, and with the approval of the President of the Board of Trade, prescribed the 22nd May, 1928, as the final date by which proofs by British nationals of debts due to them by Hungarian nationals or of pecuniary obligations of the Hungarian Government under Art. 231 of the Treaty of Trianon, and other claims by British nationals against the Hungarian Government, must be made in order to rank for payment of the eighth dividend to be declared by him.

It will be recalled that the 31st October, 1927, was the final date by which such proofs had to be made in order to rank for payment of the seventh dividend, but creditors who failed to lodge their proofs of claim with the Administrator by that date will, if they do so by the 22nd May, 1928, be entitled, subject to what is stated below in regard to claims under Art. 231 of the Treaty, to rank for payment of the dividend out of assets remaining after payment of the seventh dividend before the assets are applied to the payment of the eighth dividend.

In accordance with the rule made by the Administrator on the 7th March, 1923, claims under Art. 231 of the Treaty can only be admitted to rank at all for dividend if the proof was lodged before the 30th June, 1923, or if the time for lodging the proof is extended by the Administrator, who has power to grant an extension until two months after the claimant became aware of the existence or amount of the claim where the claimant only became aware of its existence or amount at a date subsequent to the 1st June, 1923. Claims lodged after the 22nd May, 1928, will, if accepted, only be permitted to rank against any surplus of the above-mentioned Hungarian assets, which may remain over after payment of the eighth dividend.

The prescribed forms of proof of claim may be obtained on application to the Administrator of Hungarian Property at Cornwall House, Stamford Street, London, S.E.1.

JUDGE AND "LEGAL AID SOCIETY."

The activities of "The Legal Aid Society" were severely criticised by Judge Moore in the course of a case at Woolwich County Court on the 2nd inst., in which Colonel Allen, Shrewsbury-lane, Plumstead, sought to recover from Joseph Horrocks, Wendover-road, Eltham, £23 in respect of an unpaid bill of costs. Horrocks said he brought an action against Colonel Allen for compensation for personal injuries after receiving a letter from "The Legal Aid Society." Horrocks produced the letter, which was signed, "B. Martin, secretary." Judge Moore said that it was perfectly scandalous. Horrocks had been the victim of people who posed as philanthropists, when they were simply "on the make." He would send the letter to the Incorporated Law Society.

LORD ASHMORE.

An official announcement is expected shortly of the resignation of Lord Ashmore, a judge of the Scottish Court of Session since 1920. When the vacancy occurs it is thought probable that it will be filled by the appointment of Mr. A. M. MacRobert, K.C., M.P., the Solicitor-General for Scotland.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Russell.
Monday May 21	Mr. Hicks Beach	Mr. Ritchie	Mr. Jolly	Mr. Synge
Tuesday .. 22	Synge	Bloxam	Ritchie	*Jolly
Wednesday 23	More	Jolly	Synge	*Ritchie
Thursday . 24	Ritchie	Hicks Beach	Jolly	*Synge
Friday 25	Bloxam	Synge	Ritchie	*Jolly
	Mr. Justice Romer.	Mr. Justice Astbury.	Mr. Justice Tomlin.	Mr. Justice Clauson.
Monday May 21	Mr. Ritchie	Mr. More	Mr. *Hicks Beach	Mr. Bloxam
Tuesday .. 22	*Synge	Hicks Beach	Bloxam	*More
Wednesday 23	Jolly	Bloxam	*More	*Hicks Beach
Thursday . 24	*Ritchie	More	Hicks Beach	*Bloxam
Friday 25	Synge	Hicks Beach	*Bloxam	More

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

The Whitsun Vacation will commence on Saturday, the 26th day of May, 1928, and terminate on Tuesday, the 29th day of May, 1928, inclusive.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 24th May, 1928.

	Middle Price 16th May	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	87⅞	4 11 6	—
Consols 2½%	56⅜	4 8 6	—
War Loan 5% 1929-47	100⅞	4 18 9	4 18 9
War Loan 4½% 1925-45	97	4 13 0	4 16 6
War Loan 4% (Tax free) 1929-42 ..	100½	4 0 0	4 0 0
Funding 4% Loan 1960-1990	90½	4 8 6	4 14 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years ..	93¼	4 6 0	4 7 0
Conversion 4½% Loan 1940-44.. ..	99	4 11 0	4 16 0
Conversion 3½% Loan 1961	77¼	4 10 0	—
Local Loans 3% Stock 1921 or after ..	65½	4 12 0	—
Bank Stock	264	4 11 0	—
India 4½% 1950-55	93	4 17 0	5 0 0
India 3½%	72	4 17 6	—
India 3%	62	4 17 6	—
Sudan 4½% 1939-73	96	4 14 0	4 17 0
Sudan 4% 1974	84	4 15 6	4 17 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	83	3 13 0	4 6 0
Colonial Securities.			
Canada 3% 1938	86	3 12 0	4 18 0
Cape of Good Hope 4% 1916-36 ..	93	4 6 0	5 0 6
Cape of Good Hope 3½% 1929-49 ..	82	4 6 0	5 0 0
Commonwealth of Australia 5% 1945-75	101	4 19 0	5 2 6
Gold Coast 4½% 1956	96	4 13 6	4 17 6
Jamaica 4½% 1941-71	93	4 16 0	4 18 6
Natal 4% 1937	93	4 6 0	5 0 0
New South Wales 4½% 1935-45 ..	91	4 19 0	5 7 0
New South Wales 5% 1945-65 ..	98	5 2 0	5 3 0
New Zealand 4½% 1945	97	4 13 0	4 17 6
New Zealand 5% 1946	104	4 16 6	4 16 6
Queensland 5% 1940-60	98	5 2 0	5 3 0
South Africa 5% 1945-75	104	4 16 0	5 0 0
South Australia 5% 1945-75	99	5 1 0	5 0 0
Tasmania 5% 1945-75	101	4 19 0	5 0 0
Victoria 5% 1945-75	100	5 0 0	5 0 0
West Australia 5% 1945-75	99	5 1 0	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	65	4 12 6	—
Birmingham 5% 1946-56	104	4 16 6	4 17 7
Cardiff 5% 1945-65	102	4 18 0	4 18 0
Croydon 3% 1940-60	71	4 5 6	5 0 0
Hull 3½% 1925-55	78	4 10 0	5 0 0
Liverpool 3½% Redeemable at option of Corporation	75	4 13 6	5 0 0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4 11 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	65	4 12 6	—
Manchester 3% on or after 1941 ..	64	4 13 6	—
Metropolitan Water Board 3% 'A' 1963–2003	65	4 13 0	4 17 0
Metropolitan Water Board 3% 'B' 1934–2003	66½	4 11 0	4 15 6
Middlesex C. C. 3½% 1927–47	84	4 3 6	4 17 0
Newcastle 3½% Irredeemable	73	4 16 0	—
Nottingham 3% Irredeemable	64	4 15 6	—
Stockton 5% 1946–66	102	4 18 6	4 19 0
Wolverhampton 5% 1946–56	103	4 17 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture ..	85	4 14 0	—
Gt. Western Rly. 5% Rent Charge ..	103	4 17 0	—
Gt. Western Rly. 5% Preference ..	99	5 1 0	—
L. & N. E. Rly. 4% Debenture ..	81	4 19 0	—
L. & N. E. Rly. 4% Guaranteed ..	77	5 4 0	—
L. & N. E. Rly 4% 1st Preference ..	67	5 19 0	—
L. Mid. & Scot. Rly. 4% Debenture ..	83	4 16 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	81	4 19 0	—
L. Mid. & Scot. Rly. 4% Preference ..	76¾	5 5 0	—
Southern Railway 4% Debenture ..	83	4 16 0	—
Southern Railway 5% Guaranteed ..	101	4 19 0	—
Southern Railway 5% Preference ..	94	5 6 0	—